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STATE OF NEW HAMPSHIRE
THE GOVERNOR AND EXECUTIVE COUNCIL

Governor: John H. Lynch

Executive Council Members:

Hon. Raymond S. Burton (First District)
Hon. John D. Shea (Second District)
Hon. Beverly A. Hollingworth (Third District)
Hon. Raymond J. Wieczorek (Fourth District)
Hon. Debora B. Pignatelli (Fifth District)

* * * * *

IN RE:

COMMISSIONER BODI 10-001

* * * * *

REMOVAL PETITION held before Governor John H.
Lynch and the Executive Council at the Legislative
Office Building, Rooms 301 - 303, 33 North State
Street, Concord, New Hampshire, on Tuesday,
September 21, 2010, commencing at 9:06 a.m.

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Court Reporter:

Debra L. Mekula, LCR, RMR
Licensed Court Reporter
Registered Merit Reporter
NH LCR No. 26 (RSA 310-A)

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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Mark Bodi	299	--	--	--
Eddie Edwards	336	386	448	461
Todd Feyrer	486	506	514	--
Richard Tracy	516	522	534	534

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E X H I B I T S

PETITIONER'S:	FOR ID	IN EVIDENCE
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1 - Search warrant December 14, 2009	--	Prior to hearing
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2 - Search warrant December 15, 2009	--	Prior to hearing
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3-A - Photograph	--	Prior to hearing
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3-B - Photograph	--	Prior to hearing
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3-C - Photograph	--	Prior to hearing
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3-D - Photograph	--	Prior to hearing
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3-E - Photograph	--	Prior to hearing
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3-F - Photograph	--	Prior to hearing
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4 - Administrative Notice	--	Prior to hearing
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E X H I B I T S

PETITIONER'S: FOR ID IN EVIDENCE

5 - Commissioner Bodi's oath -- Prior to hearing

6 - Chapter P-251 of the New Hampshire Division of Liquor Enforcement Licensing Administration and Operations Manual Prior to hearing 157

7 - Chapter O-405 of the New Hampshire Division of Liquor Enforcement Licensing Administration and Operations Manual Prior to hearing 504

8 - Memo dated December 9, 2009 Prior to hearing 335

RESPONDENT'S

A - Transcript of Mark Bodi's Grand Jury testimony Prior to hearing 171

B - Suspension letter dated February 19, 2010 Prior to hearing --

C - WITHDRAWN

	E	X	H	I	B	I	T	S	
	RESPONDENT'S:			FOR ID			IN EVIDENCE		
1									
2									
3	D	-	Senior Assistant						
4			Attorney General						
5			Jane Young's						
6			letter dated						
7			February 25, 2010						
8			with subpoena			Prior to			
9			duces tecum			hearing		--	
10	E	-	Senior Assistant						
11			Attorney General						
12			Jane Young's						
13			letter dated			Prior to			
14			March 8, 2010			hearing		--	
15	F	-	Letter dated						
16			March 18, 2010						
17			to Attorney Jane						
18			Young from						
19			Attorney Phil			Prior to			
20			McLaughlin			hearing		--	
21									
22	G	-	Letter dated						
23			May 6, 2010						
			to Attorney Jane						
			Young from						
			Attorney Phil			Prior to			
			McLaughlin			hearing		--	
	H	-	Letter dated						
			May 12, 2010						
			to Clerk,						
			Merrimack						
			County Superior						
			Court from the						
			Attorney General						
			with "Motion to						
			Unseal" filed			Prior to			
			under seal			hearing		--	

	E X H I B I T S		
		FOR ID	IN EVIDENCE
1	RESPONDENT'S:		
2			
3	I - Mark Bodi's		
4	Response (by		
5	Attorney		
6	McLaughlin)		
7	dated May 21,		
8	2010 to Attorney		
9	General's Motion		
10	to Unseal with		
11	Affidavit of	Prior to	
12	Mark Bodi	hearing	--
13	J - Court Order		
14	dated June 4,		
15	2010 regarding		
16	unsealing of	Prior to	
17	records	hearing	--
18	K - Letter dated		
19	June 22, 2010		
20	to Governor		
21	and Council		
22	from Attorney	Prior to	
23	McLaughlin	hearing	--
24	L - Motion dated		
25	June 28, 2010 to		
26	Clarify Court		
27	Order and/or	Prior to	
28	Unseal Transcript	hearing	--
29	M - Order dated		
30	August 5, 2010		
31	issued by		
32	Merrimack County	Prior to	
33	Superior Court	hearing	--
34	N - Recorded interview	Prior to	
35	of Joseph Fussell	hearing	--

	E	X	H	I	B	I	T	S	
	RESPONDENT'S:			FOR ID			IN EVIDENCE		
1									
2									
3	O -	Recorded interview							
4		of Chief Eddie				Prior to			
5		Edwards				hearing		--	
6	P -	Recorded interview							
7		of Major Todd				Prior to			
8		Feyrer				hearing		--	
9	Q -	Recorded interview							
10		of Chief Eddie				Prior to			
11		Edwards				hearing		--	
12	R -	Recorded interview				Prior to			
13		of Randy Filiault				hearing		--	
14	S -	Recorded interview							
15		of Representative				Prior to			
16		Dan Eaton				hearing		--	
17	T -	WITHDRAWN							
18	U -	Brochure entitled,							
19		"Senate Ways and							
20		Means Committee,							
21		SB 181, Liquor							
22		Commission							
23		Modernization				Prior to			
24		Act 2009"				hearing		--	
25	V -	Chronology of							
26		events prepared				Prior to			
27		by Chairman Bodi				hearing		--	
28	W -	Deposition of							
29		Chief Eddie				Prior to			
30		Edwards				hearing		--	
31	X -	Deposition of							
32		Major Todd				Prior to			
33		Feyrer				hearing		--	

	E X H I B I T S		
	RESPONDENT'S:	FOR ID	IN EVIDENCE
1	Y - Text of NH RSA		
2	176:1, 2, 3, 4,	Prior to	
3	7 and 8	hearing	--
4	Z - Investigator		
5	Richard Tracy's		
6	Memorandum to		
7	File dated	Prior to	
8	February 11, 2010	hearing	527
9	AA - Chairman Bodi's		
10	letter dated		
11	February 11,		
12	2010 to Senior		
13	Assistant General	Prior to	
14	Jane Young	hearing	--
15	BB - Transcript of		
16	voice mail		
17	message dated		
18	February 9,		
19	2010 from		
20	Chairman Bodi		
21	to Investigator	Prior to	
22	Richard Tracy	hearing	526
23	CC - WITHDRAWN		
	DD - WITHDRAWN		
	EE - Copy of Attorney		
	General's Office	Prior to	
	Web page	hearing	528
	FF - Union Leader		
	August 6 and	Prior to	
	August 7, 2010	hearing	--

E X H I B I T S

RESPONDENT'S: FOR ID IN EVIDENCE

GG - Attorney General

response and

disclosure of

September 13, 2010

Prior to

hearing

--

HH - Harvey Hill

Prior to

Memorandum

hearing

--

II - NOT LISTED

JJ - Letter addressed

to Whom It May

Concern from

Joseph Fussell

Prior to

hearing

125

KK - Copy of

Commissioner

Bodi's prepared

opening statement

538

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299	300
<p>1 P R O C E E D I N G S</p> <p>2 (The proceedings commence at 9:06 a.m.)</p> <p>3 GOVERNOR LYNCH: So good morning,</p> <p>4 everybody. Why don't we reconvene, if we could.</p> <p>5 I'm going to ask you all again to please turn off</p> <p>6 any cell phones or BlackBerries so we don't have</p> <p>7 that distraction. I believe, Attorney Rice,</p> <p>8 you're going to continue with your witness.</p> <p>9 MS. RICE: Yes, we are. Thank you.</p> <p>10 GOVERNOR LYNCH: And, again, like</p> <p>11 yesterday, we'll go until noontime. If anybody</p> <p>12 feels like you need to take a break, just holler,</p> <p>13 and we'll take a break.</p> <p>14 MS. CUSACK: We would recall Commissioner</p> <p>15 Bodi to the stand.</p> <p>16 GOVERNOR LYNCH: Okay.</p> <p>17 TESTIMONY OF COMMISSIONER MARK BODI,</p> <p>18 who was called as a witness and, having been</p> <p>19 previously duly sworn, was examined and testified</p> <p>20 as follows:</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MS. CUSACK:</p> <p>23 Q. Good morning --</p>	<p>1 A. Good morning.</p> <p>2 Q. -- Commissioner Bodi. Again, I would remind you</p> <p>3 that you're still under oath from yesterday.</p> <p>4 A. Yes, counselor. You've mentioned that several</p> <p>5 times. I fully understand that I will be under</p> <p>6 oath throughout this hearing.</p> <p>7 Q. I just want to cover some things that you talked</p> <p>8 about yesterday in your opening. One of those</p> <p>9 things was that you didn't receive guidance from</p> <p>10 this office. Just to be clear, your people called</p> <p>11 the Attorney General's Office one time; is that</p> <p>12 correct?</p> <p>13 A. I am aware of one call. I am not aware of any</p> <p>14 other calls, correct.</p> <p>15 Q. And that call was placed on a Tu -- on Tuesday,</p> <p>16 December the 15th, sometime after the service of</p> <p>17 the first warrant; is that correct?</p> <p>18 A. To the extent that you are referring to my</p> <p>19 statement, I do not have precise recollection as</p> <p>20 to when that call was made.</p> <p>21 Q. Okay.</p> <p>22 A. But I understand a call was made.</p> <p>23 Q. Thank you. I want to move to the next subject in</p>
301	302
<p>1 your opening yesterday, and you said that there</p> <p>2 was a demand for resignation. Your resignation.</p> <p>3 Is that correct, sir?</p> <p>4 A. That's correct.</p> <p>5 Q. And this demand was never personally made to you,</p> <p>6 was it?</p> <p>7 A. No.</p> <p>8 Q. In fact, it wasn't even a demand, was it?</p> <p>9 A. It was a demand.</p> <p>10 Q. It was a conversation that someone from the AG's</p> <p>11 Office had with your attorney.</p> <p>12 A. Correct.</p> <p>13 Q. It was not directed to you specifically by the</p> <p>14 Attorney General's Office.</p> <p>15 A. It was directed specifically to me through my</p> <p>16 attorney.</p> <p>17 Q. In settlement discussions.</p> <p>18 A. I don't know what the technical frame of them</p> <p>19 were, but they were directed to me through my</p> <p>20 attorney, Phil McLaughlin.</p> <p>21 Q. And that's an attorney that -- well, let me back</p> <p>22 up. This office, you would agree -- and when I</p> <p>23 say this office, the Attorney General's Office,</p>	<p>1 received a letter from the union. You would agree</p> <p>2 with that statement?</p> <p>3 A. Yes.</p> <p>4 Q. About this incident.</p> <p>5 A. Yes.</p> <p>6 Q. And you would agree, as a result, the Attorney</p> <p>7 General's Office wanted to speak with you about</p> <p>8 the incident?</p> <p>9 A. That's correct.</p> <p>10 Q. And they did that through a Grand Jury, right?</p> <p>11 A. That's correct.</p> <p>12 Q. And at some point you sought the assistance of</p> <p>13 Attorney Phil McLaughlin.</p> <p>14 A. That's correct.</p> <p>15 Q. And that's when a conversation with Attorney</p> <p>16 McLaughlin took place.</p> <p>17 A. What conversation are you referring to, counsel?</p> <p>18 Q. This -- this asking for your resignation.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, you, as a Commissioner, you are an</p> <p>21 appointing authority for all the classified</p> <p>22 personnel in -- in your organization; is that</p> <p>23 correct?</p>

<p style="text-align: right;">303</p> <p>1 A. I am one of three.</p> <p>2 Q. One of three appointing authorities. And you</p> <p>3 would know then the rules for classified personnel</p> <p>4 for disciplinary actions, wouldn't you?</p> <p>5 A. I would not be intimate with all of them, but I</p> <p>6 would be generally familiar with them.</p> <p>7 Q. And you know that those rules then, if you're</p> <p>8 familiar with them generally, allow for</p> <p>9 resignation in lieu of termination.</p> <p>10 A. I'm not specifically aware of that, counselor.</p> <p>11 Q. Okay. You're aware, though, that resignation is a</p> <p>12 topic that would come up when a classified</p> <p>13 employee or any employee may be terminated.</p> <p>14 A. I'm not a classified employee.</p> <p>15 Q. I understand that, but you're aware that the topic</p> <p>16 of resignation in lieu of termination comes up.</p> <p>17 A. I am appointed by the Executive Council. My</p> <p>18 understanding is they are the only ones that have</p> <p>19 the authority to remove me.</p> <p>20 Q. I understand that, sir, that this is a removal</p> <p>21 process, and that's why we're here, but that was</p> <p>22 not my question to you. You understand that</p> <p>23 resignation in lieu of termination is a topic that</p>	<p style="text-align: right;">304</p> <p>1 always comes up.</p> <p>2 A. It does not always come up with Commissioners.</p> <p>3 Q. Have you --</p> <p>4 A. Nor should it.</p> <p>5 Q. Have you ever spoken to another Commissioner about</p> <p>6 resignation, sir?</p> <p>7 A. Yes.</p> <p>8 Q. Let's move on, sir, to ethics.</p> <p>9 A. Thank you.</p> <p>10 Q. But before we get there, I just want to go back,</p> <p>11 and you said that this tribunal, the Governor and</p> <p>12 the Executive Council, have the removal authority,</p> <p>13 but you would agree that the Attorney General's</p> <p>14 Office has the -- has the statutory authority to</p> <p>15 petition for that removal.</p> <p>16 A. Of course, yes.</p> <p>17 Q. Now, moving on to ethics, you said yesterday that</p> <p>18 ethics reform was important to you.</p> <p>19 A. Yes, I did, counselor.</p> <p>20 Q. And, in fact, you advocated for and proposed this</p> <p>21 Liquor Modernization Act.</p> <p>22 A. Yes, I did.</p> <p>23 Q. So in that Liquor Modernization Act, I just want</p>
<p style="text-align: right;">305</p> <p>1 to read -- you're familiar with the Senate Ways</p> <p>2 and Means Committee, Senate Bill 181 report?</p> <p>3 A. Yes, I am.</p> <p>4 Q. And it was you that -- or your office that put</p> <p>5 this together.</p> <p>6 A. That's correct.</p> <p>7 Q. Reading to you -- do you have a copy of that --</p> <p>8 A. No, I do not.</p> <p>9 Q. -- in front of you?</p> <p>10 MS. CUSACK: Well, may I?</p> <p>11 GOVERNOR LYNCH: Yes, go ahead.</p> <p>12 MR. MCLAUGHLIN: Counsel, if you're going</p> <p>13 to present an exhibit, do you have copies?</p> <p>14 MS. CUSACK: Certainly.</p> <p>15 MR. MCLAUGHLIN: What is the exhibit</p> <p>16 number, counsel?</p> <p>17 MS. CUSACK: It has not been marked yet</p> <p>18 as an exhibit. I believe it was an exhibit that</p> <p>19 you wanted. It was marked in the depo.</p> <p>20 MR. MCLAUGHLIN: Thank you. Would you</p> <p>21 just give me one second, please?</p> <p>22 MS. CUSACK: I absolutely will.</p> <p>23 MR. MCLAUGHLIN: Eighteen?</p>	<p style="text-align: right;">306</p> <p>1 MS. CUSACK: It's page 37.</p> <p>2 MR. MCLAUGHLIN: Thirty-seven.</p> <p>3 MS. CUSACK: I'm sorry. I thought you</p> <p>4 meant Exhibit 18.</p> <p>5 MR. MCLAUGHLIN: Thank you.</p> <p>6 THE WITNESS: Counselor, I may have a</p> <p>7 copy of that in my bag if I might look.</p> <p>8 MR. MCLAUGHLIN: I have another copy.</p> <p>9 (Attorney McLaughlin hands Attorney</p> <p>10 Cusack a copy of the document.)</p> <p>11 MR. MCLAUGHLIN: Counsel, for reference</p> <p>12 purposes for the record, whether or not it will be</p> <p>13 admitted is a separate question, but I've marked</p> <p>14 this V, Victor, for ID.</p> <p>15 MS. MORIN: U.</p> <p>16 MR. MCLAUGHLIN: I'm sorry?</p> <p>17 MS. MORIN: U.</p> <p>18 MR. MCLAUGHLIN: It looked like a V to</p> <p>19 me. U, uniform --</p> <p>20 MS. CUSACK: Uniform.</p> <p>21 MR. MCLAUGHLIN: -- for ID.</p> <p>22 BY MS. CUSACK:</p> <p>23 Q. Mr. Bodi, are you there at page 37?</p>

<p style="text-align: right;">307</p> <p>1 A. Can I just familiarize -- take a minute to 2 familiarize myself with some other sections of 3 this first? 4 Q. Certainly. 5 MS. CUSACK: Phil, are you there? Phil? 6 MR. MCLAUGHLIN: Yes, page 37. Thank 7 you. 8 BY MS. CUSACK: 9 Q. When you've familiarized yourself, sir, if you 10 would, just look up. 11 (The witness reviews Exhibit U for ID.) 12 A. Okay. I'm ready, counsel. 13 Q. So I'm referring you to page 37, that paragraph 14 that says, "Ethics." 15 A. Correct. 16 Q. Would you read that, sir, into the record. 17 A. "Ethics. The LCMA, Liquor Commission 18 Modernization Act, prohibits the inappropriate 19 influencing of State officials and agency store 20 licensing decisions as well as providing clearer 21 ethical and communication guidelines regarding 22 pending administrators before -- administrative 23 matters before the Commission."</p>	<p style="text-align: right;">308</p> <p>1 Q. So this was your thought on stopping calls from 2 Legislatures -- legislators coming to you or to 3 the Commission about licensing or violation 4 activities; is that correct? 5 A. No, it is not. 6 Q. All right. What else is it -- this -- this 7 provision for? Well, let me ask you this 8 before -- you use the words, "prohibits the 9 inappropriate influencing of State officials," and 10 that is some of these phone calls that you would 11 receive; is that correct? 12 A. I wouldn't assume that, counselor. I think it 13 states that what's inappropriate influence. It's 14 in the eye of the beholder, but I think it speaks 15 for itself. 16 Q. All right. Well, you thought that receiving phone 17 calls from a State official that was trying to 18 influence were inappropriate types of 19 conversations, did you not? 20 A. I viewed a telephone call from any public official 21 whose attempt to influence a Commissioner in an 22 inappropriate way inappropriate. 23 Q. Okay. And your words yesterday, I believe in the</p>
<p style="text-align: right;">309</p> <p>1 opening, were that you wanted to rein in the 2 Eatons of the world. 3 A. That's correct. 4 Q. So you believe that conversations like the ones 5 that you were having with Representative Eaton 6 were -- were -- needed to be reined in. 7 A. What I believed was, and the intent of that 8 statement yesterday was the conversations that I 9 had with Representative Eaton, which I believed 10 were inaccurate, untruthful and designed to exert 11 pressure not only on me but others, were 12 inappropriate. 13 Q. Well, you didn't in fact learn that those things 14 were inappropriate or those facts that he was 15 presenting to you were inappropriate, wrong or 16 simply untruthful until after March 17th, did you? 17 A. That is not true. 18 Q. Okay. If I just may have a moment. 19 A. I was referring, counselor, to make it easy for 20 you, the -- there were other incidents that 21 Representative Eaton had spoken about that I knew 22 were untruthful or that I had believed to be 23 untruthful.</p>	<p style="text-align: right;">310</p> <p>1 Q. Well, I'm just going to direct your attention to 2 page 65 of day two of your testimony. Are you 3 there, sir? 4 A. Day two, 65. Yes. 5 Q. And I'm going to direct your attention 6 specifically to pages 11 -- or excuse me -- 7 paragraph -- lines 11 through 14. 8 A. Yes. 9 Q. And it says, "Is it fair to say as you sit here 10 today" -- and today was March 17th, 2010 -- "that 11 you still did not know all the underlying facts of 12 those search warrants?" Your answer, "Oh, 13 absolutely. You're right. I do not know all the 14 circumstances." 15 A. Okay. 16 Q. So even in March -- on March 17th, 2010, you still 17 didn't know the circumstances as to whether there 18 were inappropriate actions leading up to the phone 19 calls that were made to you by Representative 20 Eaton. 21 MR. MCLAUGHLIN: Objection. That's an 22 unfair characterization of an otherwise simple 23 answer.</p>

<p style="text-align: right;">311</p> <p>1 GOVERNOR LYNCH: I sustain that. Could</p> <p>2 you rephrase your question, counselor.</p> <p>3 MS. CUSACK: Okay.</p> <p>4 BY MS. CUSACK:</p> <p>5 Q. Your comment was that you did not know all of --</p> <p>6 that you believed Representative Eaton's comments</p> <p>7 were inappropriate, and then you said comments</p> <p>8 from before, but you still didn't know on</p> <p>9 March 17th all of the facts and circumstances</p> <p>10 surrounding the reason that he called.</p> <p>11 A. Oh, in that particular instance, yes, I would</p> <p>12 agree with you.</p> <p>13 Q. I want to talk to you then -- you mentioned</p> <p>14 yesterday about this legislative transfer. You</p> <p>15 believed -- and I think your comment yesterday --</p> <p>16 it was a waste of time to get hauled over to the</p> <p>17 Legislature. Do you remember that comment from</p> <p>18 yesterday, sir?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And this was a waste of time because Dan Eaton was</p> <p>21 fighting -- you were fighting Dan Eaton on the</p> <p>22 transfer of Liquor Enforcement to Safety.</p> <p>23 A. That wasn't why it was a waste of time, in my</p>	<p style="text-align: right;">312</p> <p>1 view --</p> <p>2 Q. Oh, all right.</p> <p>3 A. -- because I was fighting him.</p> <p>4 Q. Well, you -- you were complaining that Dan Eaton</p> <p>5 was hauling you over to the Legislature, and that</p> <p>6 was a waste of time, were you not?</p> <p>7 A. What I attempted to convey in my statement, and</p> <p>8 obviously I didn't do a very good job of it, was</p> <p>9 that this legislation was presented</p> <p>10 inappropriately, in my opinion, through the</p> <p>11 budgetary process. It had been not vetted by the</p> <p>12 public, not subjected to an open public hearing.</p> <p>13 I had believed at that time that it was done at</p> <p>14 the behest of Representative Eaton through</p> <p>15 Representative Smith, who was Chairman of the</p> <p>16 Finance Committee, who undertook the very highly</p> <p>17 unusual step of entering into a budget session</p> <p>18 without any notifica -- notification whatsoever to</p> <p>19 members of the Liquor Commission and announcing</p> <p>20 that she was submitting legislation to bifurcate</p> <p>21 the Liquor Commission.</p> <p>22 We were not given any opportunity to speak on</p> <p>23 the merits of that that day or later. Let me</p>
<p style="text-align: right;">313</p> <p>1 finish, please, counselor. I know you're anxious</p> <p>2 to talk about this. That legislation was</p> <p>3 subsequently defeated in the Senate, and it was</p> <p>4 defeated because virtually -- I wouldn't say</p> <p>5 virtually. Every significant constituency in the</p> <p>6 State of New Hampshire opposed it. Sheriff's</p> <p>7 Department, Chiefs of Police Association, New</p> <p>8 Futures, Alcohol Prevention. Um -- all of the</p> <p>9 industry groups, and there's a list of them in my</p> <p>10 presentation, were very much opposed to this, even</p> <p>11 the Hospitality Association that has a vested</p> <p>12 interest in this, and it speaks to the issues that</p> <p>13 Dan Eaton was talking about. The bars -- the bar</p> <p>14 owners were all upset. The hospitality industry</p> <p>15 said no, this is just -- you know, we don't think</p> <p>16 this is appropriate. Not at all.</p> <p>17 So, in answer to your question, Dan Eaton</p> <p>18 succeeded, what I would say, and as I referred to,</p> <p>19 in the middle of the night to inject a very</p> <p>20 significant public policy initiative in a budget</p> <p>21 where the Governor was attempting to deal with an</p> <p>22 enormous financial crisis, and it not only was</p> <p>23 counter to good public policy and doing the right</p>	<p style="text-align: right;">314</p> <p>1 thing with respect to being open, it also spoke to</p> <p>2 the very significant diversion of ethics that the</p> <p>3 Liquor Commission had to undertake to go before</p> <p>4 the committee and defend that.</p> <p>5 Now, if I might continue, and I will conclude</p> <p>6 in a moment. There was almost universal --</p> <p>7 actually there was. There was not one individual</p> <p>8 throughout the entire summer, not one, not one</p> <p>9 piece of paper. Dan Eaton, I believe, submitted</p> <p>10 letters that were not made public. One of them, I</p> <p>11 believe, was from Randy Filiault. Not one</p> <p>12 individual who testified in favor of this.</p> <p>13 Members of the committee felt as I did,</p> <p>14 counselor. It was what we would call a</p> <p>15 bureaucratic waste of time. And it was</p> <p>16 unfortunate under the circumstances that my senior</p> <p>17 staff and I, who were laboring so hard to come up</p> <p>18 with initiatives to raise money for the State of</p> <p>19 New Hampshire, had spent literally hundreds of</p> <p>20 thousands of dollars on an issue that would have</p> <p>21 been more appropriately dealt with in a different</p> <p>22 setting. That's my answer.</p> <p>23 Q. I wanted to just talk about a couple things that</p>

<p style="text-align: right;">315</p> <p>1 were in that answer. One of the things that you</p> <p>2 said was you had -- you did not have the</p> <p>3 opportunity to speak to this at any time in</p> <p>4 public. What I just believe I heard you say. And</p> <p>5 that's not accurate. Because there was a study</p> <p>6 committee that was formed to look at whether to</p> <p>7 transfer Liquor Enforcement to the Department of</p> <p>8 Safety, wasn't there?</p> <p>9 A. It is accurate, counselor. As I conveyed to you,</p> <p>10 the initial proposal was submitted in the middle</p> <p>11 of a Division Two budget committee, and I was not</p> <p>12 permitted to speak to it, nor was the public</p> <p>13 invited to speak to it. It was only until we</p> <p>14 reached the study committee after legislation had</p> <p>15 already passed was able to speak to it.</p> <p>16 Q. Well, the legislation also had this provision in</p> <p>17 it for a study committee, did it not? That same</p> <p>18 legislation.</p> <p>19 A. Your question to me was did I have an opportunity</p> <p>20 to speak publicly to it. The answer was in its</p> <p>21 incipient stages, we did not.</p> <p>22 Q. And you did have ultimately an answer to speak</p> <p>23 public -- or an opportunity to speak publicly on</p>	<p style="text-align: right;">316</p> <p>1 it, did you not?</p> <p>2 A. Thankfully so, yes.</p> <p>3 Q. And that was in September of 2009, was it not?</p> <p>4 A. Correct.</p> <p>5 Q. And at that time this open public debate that was</p> <p>6 going on, Randy Eaton [sic] still spoke out</p> <p>7 against -- or for the transfer, I should say, did</p> <p>8 he not?</p> <p>9 MS. RICE: Dan Eaton.</p> <p>10 BY MS. CUSACK:</p> <p>11 Q. I'm sorry. Dan Eaton spoke out for the transfer</p> <p>12 in this public debate.</p> <p>13 A. As I recall, he offered no direct testimony.</p> <p>14 Q. Well, he certainly -- he certainly didn't sign --</p> <p>15 A. May I --</p> <p>16 Q. -- the committee report.</p> <p>17 A. May I finish, please?</p> <p>18 Q. You answered my question, sir. He did not</p> <p>19 offer --</p> <p>20 A. I'd like to finish, and then you have</p> <p>21 opportunity. Representative Eaton provided no</p> <p>22 direct testimony outlining his reasons for</p> <p>23 opposing it, not -- he did not testify. And, as I</p>
<p style="text-align: right;">317</p> <p>1 recall, he didn't attend half of the meetings. I</p> <p>2 might be wrong. We'd have to look at the</p> <p>3 attendance. You are correct that he did not sign</p> <p>4 the committee report.</p> <p>5 Q. If you would, one moment, please.</p> <p>6 (There is a pause in the proceedings.)</p> <p>7 Q. While -- and we're going to come back to the</p> <p>8 matter of Mr. Eaton not attending half -- or you</p> <p>9 don't believe. If I make the representation to</p> <p>10 you that he missed -- I believe it was one or two</p> <p>11 out of seven meetings, would you accept that?</p> <p>12 A. I -- I would not like to make any representation</p> <p>13 until we see the attendance record.</p> <p>14 Q. Okay. Let's move on, though. At the end of this</p> <p>15 study committee, Randy Eaton [sic] did not support</p> <p>16 the recommendation that was in the study</p> <p>17 committee, did he?</p> <p>18 A. Representative Eaton. Daniel Eaton, yes.</p> <p>19 Q. I'm sorry. I continue to call him Randy. Dan.</p> <p>20 He did not. So publicly he recommended that the</p> <p>21 transfer still occur?</p> <p>22 A. Yes.</p> <p>23 Q. And you understood that this committee had to file</p>	<p style="text-align: right;">318</p> <p>1 a recommendation.</p> <p>2 A. Yes, I did.</p> <p>3 Q. And I'd like to show you that recommendation.</p> <p>4 We've marked it as Exhibit 8 for full identifi --</p> <p>5 actually it was for ID.</p> <p>6 MS. CUSACK: Phil.</p> <p>7 (Attorney Cusack shows the exhibit to</p> <p>8 Attorney McLaughlin.)</p> <p>9 COUNCILOR HOLLINGWORTH: Is it 8 or is it</p> <p>10 7?</p> <p>11 MS. CUSACK: This is Exhibit 8.</p> <p>12 COUNCILOR HOLLINGWORTH: Are you going to</p> <p>13 present that to us?</p> <p>14 MS. CUSACK: Yes.</p> <p>15 (Attorney McLaughlin speaks to Attorney</p> <p>16 Cusack off the record.)</p> <p>17 MS. CUSACK: I will give you a copy of</p> <p>18 it. We're looking for it.</p> <p>19 MS. RICE: Here you go.</p> <p>20 MS. CUSACK: I thank you.</p> <p>21 MS. RICE: I apologize for the delay.</p> <p>22 (Attorney Cusack hands the exhibit to the</p> <p>23 Governor and the Executive Council.)</p>

<p style="text-align: right;">319</p> <p>1 BY MS. CUSACK:</p> <p>2 Q. So you understand that Representative Eaton did</p> <p>3 not -- did not recommend the same thing that the</p> <p>4 study committee did --</p> <p>5 A. Yes.</p> <p>6 Q. -- is that correct?</p> <p>7 A. Yes, I do, counselor.</p> <p>8 Q. And he did not sign that report.</p> <p>9 A. Yes, counsel.</p> <p>10 Q. And the recommendation was to hold off on the</p> <p>11 transfer and to continue its study.</p> <p>12 A. That's correct.</p> <p>13 Q. And that was all done in public debate.</p> <p>14 A. That's correct.</p> <p>15 Q. I want to just go over --</p> <p>16 MS. CUSACK: And I was not going to mark</p> <p>17 these, Phil, but --</p> <p>18 (Attorney Cusack speaks off the record to</p> <p>19 Attorney McLaughlin.)</p> <p>20 MS. CUSACK: Okay. All right. I've just</p> <p>21 reviewed the record with Phil, and there were</p> <p>22 seven meetings, and Representative Eaton missed</p> <p>23 two of those meetings, and Phil says that he would</p>	<p style="text-align: right;">320</p> <p>1 represent -- or stipulate to that.</p> <p>2 MR. MCLAUGHLIN: If that's what counsel</p> <p>3 represents based upon her review, we have no</p> <p>4 reason to doubt her, and we will stipulate.</p> <p>5 GOVERNOR LYNCH: Thank you.</p> <p>6 BY MS. CUSACK:</p> <p>7 Q. I want to move on to the next subject with you,</p> <p>8 Chairman. Talk about -- and it follows with the</p> <p>9 legislative work that you were doing. Every</p> <p>10 Commissioner has to go before the Finance</p> <p>11 Committee for their budget, do they not?</p> <p>12 A. Yes, they do.</p> <p>13 Q. Every Commissioner faces pressure to get every</p> <p>14 dollar that they can from that budgetary process.</p> <p>15 A. They do.</p> <p>16 Q. Every Commissioner feels pressure to protect their</p> <p>17 agency.</p> <p>18 A. Yes, they do.</p> <p>19 Q. All right. Now, when you're under pressure or</p> <p>20 perceived pressure, you ignore the rules, don't</p> <p>21 you, sir?</p> <p>22 A. No, ma'am.</p> <p>23 Q. All right. In fact, you have a history of</p>
<p style="text-align: right;">321</p> <p>1 ignoring rules when it serves your purpose, don't</p> <p>2 you, sir?</p> <p>3 A. No, I don't believe so.</p> <p>4 Q. Well, you like to cut corners and ignore the rules</p> <p>5 because you cut corners when you purchased that</p> <p>6 450,000-dollar mobile command unit, didn't you,</p> <p>7 sir?</p> <p>8 A. No, counselor.</p> <p>9 Q. You had no problems with the -- with following the</p> <p>10 rules and doing what the process requires when you</p> <p>11 purchased the 450,000-dollar mobile command unit,</p> <p>12 sir?</p> <p>13 A. No, counselor.</p> <p>14 Q. You did not?</p> <p>15 A. No.</p> <p>16 Q. You just cut no corners?</p> <p>17 A. May I explain? I think this Council is intimately</p> <p>18 familiar to some degree with the incident</p> <p>19 regarding the mobile -- the DUI unit. That unit</p> <p>20 was requested under the auspices of Commissioner</p> <p>21 Russell, and it was -- there were federal funds</p> <p>22 that were provided by the -- I believe it was a</p> <p>23 funding from Peter Thomson's organization. And</p>	<p style="text-align: right;">322</p> <p>1 Representative Russell [sic], who was responsible</p> <p>2 for the Enforcement Division, oversaw the</p> <p>3 administration of the procurement of the van.</p> <p>4 I received a phone call from the Director of</p> <p>5 Administrative Services, Linda Hodgdon. Actually,</p> <p>6 I -- and I remember vividly because I was on my</p> <p>7 way to Manchester, and she was very upset. And</p> <p>8 she was complaining about this van that she had</p> <p>9 said had toys in it, a television set and other</p> <p>10 aspect to it. And I corrected her, and I said,</p> <p>11 "You know that's the law enforcement vehicle,</p> <p>12 Commissioner, and I would be happy to speak to you</p> <p>13 about it. I don't know anything about it."</p> <p>14 And I conveyed to her, I said, "You know, I</p> <p>15 got a difficult shop going on here. I'm kind of</p> <p>16 managing things my -- this business aspect."</p> <p>17 That's Pat Russell's responsibility. She was</p> <p>18 working with -- Pat was working with -- um --</p> <p>19 Eddie Edwards regarding it. But, nevertheless,</p> <p>20 given the seriousness of her inquiry, I went to</p> <p>21 visit her. She indicated to me that she felt that</p> <p>22 the process -- the administrative process by which</p> <p>23 additions, change orders, that would be made to</p>

<p style="text-align: right;">323</p> <p>1 the van were not done appropriately. And I said</p> <p>2 to her, "You know, you might very well be right.</p> <p>3 I don't know anything about this. Let me find out</p> <p>4 and get back to you." And she said, "I'm not</p> <p>5 going to approve this."</p> <p>6 I went back to my office. I had a meeting</p> <p>7 with Eddie Edwards, and I grilled him on it. What</p> <p>8 the hell is going on here? And he said, "This was</p> <p>9 done appropriately. We have received all of the</p> <p>10 necessary approvals. Everybody in Administrative</p> <p>11 Services had approved it." He provided me with a</p> <p>12 document that had indicated, and it had shown each</p> <p>13 and every required signature in Administrative</p> <p>14 Services had signed it, counselor. Every one of</p> <p>15 them, with the exception of one. Linda Hodgdon.</p> <p>16 I picked up the phone, and I called Mike Brown</p> <p>17 at the Attorney General's Office. I said, "Mike,</p> <p>18 you know, we got a problem here. We got this van</p> <p>19 that I haven't been involved in whatsoever. Linda</p> <p>20 is very upset over this whole thing. Peter</p> <p>21 Thomson tells me that we're reaching an end point</p> <p>22 where this could be funded, and she's insisting</p> <p>23 that we don't sign it, that she's not going to</p>	<p style="text-align: right;">324</p> <p>1 sign it." And I said, "If they don't sign it, the</p> <p>2 State is going to be responsible for paying it.</p> <p>3 Can you help me?"</p> <p>4 I outlined a letter, and then I had another</p> <p>5 subsequent conversation with Linda Hodgdon. And</p> <p>6 she had said to me that, "I'm not going to sign</p> <p>7 this, and you're going to have to go before the</p> <p>8 Executive Council and say that you've made a</p> <p>9 mistake. Your agency made a mistake." And I</p> <p>10 said, "Linda, I'm not going to go before the</p> <p>11 Executive Council and say I made a mistake unless</p> <p>12 I know our agency made one."</p> <p>13 And I wish I had the benefit of those</p> <p>14 documents, counselor. You might have them. But I</p> <p>15 said -- I sent a copy of my letter to Mike Brown</p> <p>16 at the Attorney General's Office reaching out, and</p> <p>17 I pleaded with Linda Hodgdon. I said, "You know,</p> <p>18 let's examine this. Something might have gone</p> <p>19 wrong." But I certainly don't want -- I didn't</p> <p>20 think it was appropriate and fair to my</p> <p>21 Enforcement Division. It certainly wasn't -- and</p> <p>22 given the fact that Commissioner Russell was</p> <p>23 responsible for this, I was taking on a new -- I</p>
<p style="text-align: right;">325</p> <p>1 was taking on -- I was handling the mess -- given</p> <p>2 the mess, if you will. She would have no part of</p> <p>3 it. She never responded to my letters. Neither,</p> <p>4 I might add, did Mike Brown, okay.</p> <p>5 I'm not done yet, counselor. I know you're</p> <p>6 anxious, but this is a very important story. I</p> <p>7 contacted and spoke with -- in a further effort to</p> <p>8 determine what had happened regarding these change</p> <p>9 orders, and they -- and they explained them to</p> <p>10 me. They were very specific changes to the van on</p> <p>11 its equipment. They had a committee that dealt</p> <p>12 with it, and so they changed the -- um -- it</p> <p>13 wasn't a television -- it wasn't a TV at all. It</p> <p>14 was a monitoring device that they used as a</p> <p>15 briefing tool. Other changes that were made to</p> <p>16 accommodate the utilization of the van -- um --</p> <p>17 and so forth. So it was sensationalized as an</p> <p>18 extravagant waste of money when in fact it was an</p> <p>19 important law enforcement tool, but there might</p> <p>20 have been questions regarding how the procedure</p> <p>21 had been conducted.</p> <p>22 Q. Is that --</p> <p>23 A. As we were moving forward --</p>	<p style="text-align: right;">326</p> <p>1 Q. Oh.</p> <p>2 A. -- I requested and stated, as I said, because</p> <p>3 Peter Thomson needed to receive his approvals to</p> <p>4 pay for this without State Funds, why don't we --</p> <p>5 why don't we -- let's approve it and then conduct</p> <p>6 a review and get to the bottom of it. Linda</p> <p>7 wouldn't do that either. So I said, "You know, if</p> <p>8 you -- you know, let the Commissioner of</p> <p>9 Administrative Services handle it. I certainly</p> <p>10 can't go in there and represent that I made a</p> <p>11 mistake when I don't even know what the facts</p> <p>12 were." I received -- then subsequently I received</p> <p>13 a call, I believe, from Bud Fitch, and it was all</p> <p>14 worked out.</p> <p>15 Q. I -- I -- I think that you've answered.</p> <p>16 A. Now, counselor, please. I haven't answered.</p> <p>17 You've asked this question, and it's important to</p> <p>18 me, and it's important to the Council because</p> <p>19 they've heard this.</p> <p>20 Q. Well --</p> <p>21 A. You know what -- counselor, please.</p> <p>22 Q. Okay.</p> <p>23 A. This is my career, and I'd like to answer that</p>

<p style="text-align: right;">327</p> <p>1 question.</p> <p>2 Q. Certainly.</p> <p>3 A. Thank you. The -- Bud Fitch is dispatched to fix</p> <p>4 this problem. And he gets everybody in a room</p> <p>5 over at the AG's Office, and they say well, you</p> <p>6 know, Eddie's -- Eddie's people are trying to</p> <p>7 defend their actions and saying, you know, you</p> <p>8 should look into this. We have a document that</p> <p>9 shows that we have all the signatures with the</p> <p>10 exception of Linda Hodgdon, and certainly her</p> <p>11 signature -- her signature was important and</p> <p>12 necessary in a perfunctory sense, but it was not</p> <p>13 evidence that we had broken any rules by any</p> <p>14 stretch of the imagination.</p> <p>15 And Bud Fitch said that, "Well, what we'll do</p> <p>16 is I'll present it," even though there was a</p> <p>17 provision in the statute that said there were --</p> <p>18 if there was a time limit whereby you would lose</p> <p>19 the opportunity to receive federal funds, it could</p> <p>20 have gone forward without any additional approvals</p> <p>21 by Administrative Services. For the good of the</p> <p>22 order, I agreed to do that. I agreed to do that</p> <p>23 even though I was not pleased with the response we</p>	<p style="text-align: right;">328</p> <p>1 had received from the Attorney General's Office</p> <p>2 and their failure to review the documents that we</p> <p>3 sent to them and, secondly, what I felt was not</p> <p>4 a -- an emotional response from Linda Hodgdon, and</p> <p>5 I can understand that. She was under a lot of</p> <p>6 pressure, and she saw this as a difficult</p> <p>7 situation with this van.</p> <p>8 I was in my office. I had no plans to attend</p> <p>9 that hearing that day when I spoke regarding it.</p> <p>10 As a matter of fact, I was sick. I had</p> <p>11 diverticulitis, and -- and they called me. Bud</p> <p>12 Fitch had somebody call me and said, "We want you</p> <p>13 to come up. Come up to the meeting." I says,</p> <p>14 "Well, our understanding was is that Eaton was</p> <p>15 going to present it." And Bud Fitch was not</p> <p>16 supposed to present that as we made an error. It</p> <p>17 was a misunderstanding here.</p> <p>18 And through the course of that dialogue -- and</p> <p>19 I remember, Councilor Hollingworth, you were very</p> <p>20 concerned about the possibility that the agency</p> <p>21 had made mistakes, and we didn't recognize it.</p> <p>22 Rightly so. I had to defend my agency, and that</p> <p>23 wasn't the issue. That wasn't the issue at all.</p>
<p style="text-align: right;">329</p> <p>1 And so I spoke in defense of my agency, and the</p> <p>2 fact -- the fact was we had received every</p> <p>3 signature of approval with the exception of one.</p> <p>4 Here comes the crescendo. In that meeting,</p> <p>5 you will recall that Bud Fitch said that we'll get</p> <p>6 to the bottom of this. We'll investigate it. And</p> <p>7 the importance of that was emphasized when law</p> <p>8 enforcement personnel made and represented to the</p> <p>9 Attorney General's Office -- sworn law enforcement</p> <p>10 personnel stated that admin -- documents provided</p> <p>11 from or through Administrative Services --</p> <p>12 Administrative Services may have been altered.</p> <p>13 Now, I thought that that was pretty damn</p> <p>14 serious. I really did, and it bothered me. It</p> <p>15 really bothered me, and -- and you know what? To</p> <p>16 the day -- to this day -- to this day, they have</p> <p>17 never reviewed that van and those issues, and it</p> <p>18 has been a problem. That's why the relationship</p> <p>19 between the Enforcement Division and the Attorney</p> <p>20 General's Office was so strained. You know what</p> <p>21 their response was? Well, we don't want to look</p> <p>22 backward. We want to look forward.</p> <p>23 My feeling was, and I expressed it in my</p>	<p style="text-align: right;">330</p> <p>1 letters. Let's review it. Let's find out what's</p> <p>2 wrong, and if my agency did something wrong, I was</p> <p>3 going to act on it. So the -- the short answer to</p> <p>4 your question is absolutely not. Not only was I</p> <p>5 not taking -- cutting corners, counselor, I was</p> <p>6 doing my job, I think, in a way that it was much</p> <p>7 more positive and responsible than unfortunately</p> <p>8 your own agencies.</p> <p>9 Q. Let me just ask you a couple questions about your</p> <p>10 answer. So I understand it's your testimony that</p> <p>11 it's not your doing. It was the doing of, first,</p> <p>12 Pat Russell, then Linda Hodgdon, then the AG's</p> <p>13 Office. You had nothing to do with how that</p> <p>14 played out. That's what I understand your answer</p> <p>15 to be.</p> <p>16 A. Then you didn't understand my answer, counselor.</p> <p>17 Q. All right. I also understand, and this is</p> <p>18 interesting, that you grilled Eddie Edwards. You</p> <p>19 grilled him on -- when you said what the hell is</p> <p>20 going on here? I had to grill him. I got a lot</p> <p>21 of detail, got a lot of paper work from Eddie.</p> <p>22 Completely contrary to what you did in this case,</p> <p>23 sir. You didn't get any paper work, did you? You</p>

<p style="text-align: right;">331</p> <p>1 didn't get any details. You didn't look at one</p> <p>2 document that came before you or that -- you</p> <p>3 didn't ask for one document to look at the</p> <p>4 situation that was presented to you on</p> <p>5 December 14th or December 15th, did you, sir?</p> <p>6 A. I did ask for a document.</p> <p>7 Q. You -- what document did you review on</p> <p>8 December 14th or 15th?</p> <p>9 A. Oh, on the 14th. No, I did not, no.</p> <p>10 Q. What document did you review on the 15th?</p> <p>11 A. No, I did not.</p> <p>12 Q. What document did you review on the 16th?</p> <p>13 A. I do think circumstances were a little different,</p> <p>14 but I accept your point, counselor. I did not ask</p> <p>15 for those documents.</p> <p>16 Q. And another point that was interesting that you</p> <p>17 just talked about, that you reached out to the</p> <p>18 Attorney General's Office for help. You called</p> <p>19 Mike Brown. You called Bud Fitch. And they both</p> <p>20 came and talked to you. That's what your</p> <p>21 testimony was.</p> <p>22 A. That was not what my testimony was.</p> <p>23 Q. Mike -- you called Mike Brown.</p>	<p style="text-align: right;">332</p> <p>1 A. My testimony was -- let me repeat it for you</p> <p>2 counselor, and I understand that we've got a lot</p> <p>3 going on here. I contacted Mike Brown, and I</p> <p>4 forwarded him a copy of a letter. He did not get</p> <p>5 back to me. The only time he got back to me was</p> <p>6 when this -- when the -- there was a pending</p> <p>7 Executive Council meeting, and it coincided with</p> <p>8 the deadline of whether or not these funds would</p> <p>9 be -- either -- so if we missed it, Peter Thomson</p> <p>10 said the -- Peter Thomson said we'll lose our</p> <p>11 opportunity to be reimbursed.</p> <p>12 Q. Let --</p> <p>13 A. Bud Fitch called our office only because the</p> <p>14 Governor's Office got called.</p> <p>15 Q. Let me just stop you. You're not answering my</p> <p>16 question because -- and, in fact, you did when you</p> <p>17 said, "He did not call me. Mike Brown did not</p> <p>18 respond." And then you just said the only time he</p> <p>19 called me --</p> <p>20 A. No.</p> <p>21 Q. -- so thank you.</p> <p>22 A. Counselor, I think you're splitting hairs.</p> <p>23 Q. And your attorney can --</p>
<p style="text-align: right;">333</p> <p>1 A. Thank you.</p> <p>2 MS. CUSACK: I have no further questions</p> <p>3 for the witness.</p> <p>4 GOVERNOR LYNCH: Okay. Attorney</p> <p>5 McLaughlin.</p> <p>6 MR. MCLAUGHLIN: Governor Lynch, in the</p> <p>7 ordinary course, I would call my own client in my</p> <p>8 own case. There has been dialogue with counsel</p> <p>9 for the Executive Council and your counsel about</p> <p>10 the order of presentation because I would have the</p> <p>11 opportunity now to cross-examine, but I don't want</p> <p>12 to cross-examine my own client. So what I'm</p> <p>13 saying is formally I will not cross-examine</p> <p>14 Mr. Bodi at this time. I reserve the right to</p> <p>15 call him in my own case and expect to do that upon</p> <p>16 completion of the State's case.</p> <p>17 GOVERNOR LYNCH: Okay. Thank you very</p> <p>18 much, Attorney McLaughlin.</p> <p>19 MS. RICE: Governor, the next witness is</p> <p>20 Chief Edwards. I am not sure if he is here yet.</p> <p>21 I need to go and check.</p> <p>22 GOVERNOR LYNCH: Okay. While you're</p> <p>23 doing that, why don't I just consult with counsel.</p>	<p style="text-align: right;">334</p> <p>1 MS. CUSACK: They might have questions</p> <p>2 for you, so I don't know if you're released.</p> <p>3 THE WITNESS: Oh, I'm sorry.</p> <p>4 (Governor Lynch consults with counsel off</p> <p>5 the record.)</p> <p>6 GOVERNOR LYNCH: Attorney Rice and</p> <p>7 Attorney McLaughlin, what I'd like to do is</p> <p>8 propose that the Executive Councilors do not at</p> <p>9 this point ask Mr. Bodi questions but wait until</p> <p>10 you're finished with your questions such that all</p> <p>11 of the information will be available then for the</p> <p>12 Executive Councilors to ask their questions.</p> <p>13 MR. MCLAUGHLIN: Understood, Governor.</p> <p>14 GOVERNOR LYNCH: Are you okay with that?</p> <p>15 Thank you very much, Mr. Bodi.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 GOVERNOR LYNCH: So there's been a</p> <p>18 request to take a five-minute break, so let's take</p> <p>19 a five-minute break.</p> <p>20 MS. RICE: Mr. Edwards is here. I'm</p> <p>21 sorry for that.</p> <p>22 GOVERNOR LYNCH: He is your next</p> <p>23 witness.</p>

<p style="text-align: right;">335</p> <p>1 (The proceedings are recessed at 2 9:51 a.m.) 3 (The proceedings reconvene on the record 4 at 10:02 a.m.) 5 GOVERNOR LYNCH: Okay. So we're all 6 set. Attorney Rice, whenever you're ready. 7 MS. RICE: Thank you. And before we get 8 started, we need to -- 9 MS. CUSACK: One housekeeping issue. 10 Just to mark the identification -- or strike the 11 identification on Exhibit 8 and make it a full 12 exhibit. 13 MS. RICE: Thank you. 14 MR. MCLAUGHLIN: Agreed, Governor. 15 GOVERNOR LYNCH: Okay. Thank you. 16 (The identification marking is stricken 17 from Petitioner's Exhibit 8, and the exhibit is 18 received in evidence.) 19 MS. RICE: Chief Edwards, can you stand 20 for a moment, please. Can you raise your right 21 hand. 22 23</p>	<p style="text-align: right;">336</p> <p>1 TESTIMONY OF EDDIE EDWARDS, 2 who was called as a witness and, having been first 3 duly sworn, was examined and testified as follows: 4 DIRECT EXAMINATION 5 BY MS. RICE: 6 Q. Thank you. Please have a seat. And if you could 7 introduce yourself to the Governor and the 8 Executive Council. 9 A. Good morning, Governor, Honorable Council 10 Members. My name is Eddie Edwards. I'm the 11 Director of the New Hampshire State Liquor 12 Commission Enforcement. 13 Q. And I just want to remind you that this is being 14 recorded, and so can you spell your last name for 15 the court reporter. 16 A. E-d-w-a-r-d-s. 17 Q. Thank you. Direct -- I know you as Chief 18 Edwards -- 19 A. Yes. 20 Q. -- not Director Edwards. 21 A. Either one is fine. 22 Q. Okay. 23 A. Eddie is fine as well.</p>
<p style="text-align: right;">337</p> <p>1 Q. You said that you are the Director of the Division 2 of Law Enforcement at the Liquor Commission? 3 A. Yes, I am. 4 Q. How long have you been there? 5 A. I've been with the Liquor Commission -- I think 6 it's the beginning of my 16th year. 7 Q. And how long have you been in the position of 8 Director? 9 A. Um -- that title was changed this last legislative 10 process. I've been the Chief, Director for six 11 years -- well, five and a half years. 12 Q. Prior to that what were you doing at the Liquor 13 Commission? 14 A. I was lieutenant in charge of educational 15 programs, community outreach programs. 16 Q. Okay. Now, did you have any law enforcement 17 experience outside of the Liquor Commission? 18 A. No. 19 Q. Okay. What are your responsibilities as Director? 20 A. To oversee the effective operation of law 21 enforcement, the licensing and education divisions 22 -- um -- craft policies through the stages for the 23 Liquor Commission, to help in administrative rule</p>	<p style="text-align: right;">338</p> <p>1 writing and legislative proceedings and writing 2 and crafting legislation. 3 Q. So there's a wide range of activities that you do. 4 A. Yes. 5 Q. And enforcement -- regulatory enforcement is one 6 of them. Law enforcement is one -- one aspect of 7 your job -- 8 A. Yes. 9 Q. -- correct? Now, I want to turn your attention to 10 the circumstances at the Railroad Tavern back in 11 December of 2009, okay. When did you first become 12 aware that there was a search warrant being 13 executed at the Railroad Tavern? Do you recall? 14 A. Um -- I think it was shortly after it was executed 15 actually. 16 Q. And what was the nature of that information or how 17 did you learn? What did you learn? 18 A. I received a call, I think, from the Deputy Chief 19 or the major, either one, who oversees those 20 operations at the time, informing me that we're 21 going to execute a search warrant and that 22 Representative Dan Eaton had arrived and was there 23 during the execution of that search warrant.</p>

<p style="text-align: right;">339</p> <p>1 Q. So what was -- why would someone report that</p> <p>2 Representative Dan Eaton had showed up? Is that</p> <p>3 an unusual circumstance?</p> <p>4 A. It's very unusual to have anyone show up in a</p> <p>5 search warrant area and not be removed or asked to</p> <p>6 leave, but particularly when an elected official</p> <p>7 arrives it is very troubling.</p> <p>8 Q. Now, did you take any steps when you learned that</p> <p>9 the search warrant had been executed and that</p> <p>10 Representative Eaton had showed up?</p> <p>11 A. I'm sorry?</p> <p>12 Q. Did you do anything? Did you alert anyone else of</p> <p>13 that information?</p> <p>14 A. I -- I notified Chairman Bodi.</p> <p>15 Q. Okay. And why did you feel the need to</p> <p>16 communicate that to Chairman Bodi?</p> <p>17 A. Again, it was a little -- um -- unusual. It was</p> <p>18 -- um -- highly inappropriate, and the Chairman is</p> <p>19 my immediate supervisor, the Commissioner, so I</p> <p>20 reported to the Chairman.</p> <p>21 Q. Okay. And had you -- did you have some background</p> <p>22 information about Representative Eaton that caused</p> <p>23 you concern?</p>	<p style="text-align: right;">340</p> <p>1 A. Well, Representative Eaton had some personal</p> <p>2 issues -- I assume he had personal issues with</p> <p>3 me. I know he was motivated to some extent to</p> <p>4 have me removed from my position. I know that he</p> <p>5 was upset with me on a personal level, but I have</p> <p>6 no idea why. So I think that was some of his</p> <p>7 effort to get involved in some of my cases.</p> <p>8 Q. In some of the law enforcement cases?</p> <p>9 A. Law enforcement cases.</p> <p>10 MR. MCLAUGHLIN: I'm sorry, counsel. I</p> <p>11 didn't hear.</p> <p>12 MS. RICE: I said in some of the law</p> <p>13 enforcement cases.</p> <p>14 THE WITNESS: Some of the law enforcement</p> <p>15 cases, some of the licensing cases, and I remember</p> <p>16 telling Commissioner -- I'm sorry -- Chairman Bodi</p> <p>17 that most of the things that Representative Dan</p> <p>18 Eaton had reported to you are just not true. Not</p> <p>19 even close to being true.</p> <p>20 BY MS. RICE:</p> <p>21 Q. Okay. So you were aware that Representative Eaton</p> <p>22 had reported some things to Commissioner Bodi.</p> <p>23 A. Yes.</p>
<p style="text-align: right;">341</p> <p>1 Q. About law enforcement issues?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And were you also concerned about potential</p> <p>4 political ramifications because Representative</p> <p>5 Eaton was at the Railroad Tavern?</p> <p>6 A. Personally, I wasn't concerned about political</p> <p>7 ramifications, but I -- I know in the nature that</p> <p>8 the Chairman works in, and this is a -- it was</p> <p>9 during a political process, political season. We</p> <p>10 had just finished the budget, and I thought it was</p> <p>11 something he needed to be aware of. My concern</p> <p>12 was a Representative, an elected official, being</p> <p>13 involved in our case.</p> <p>14 Q. So -- so as the Chief of Law Enforcement, you're</p> <p>15 concerned about how his presence would affect a</p> <p>16 law enforcement investigation.</p> <p>17 A. Right.</p> <p>18 Q. And when you spoke to Commissioner Bodi and</p> <p>19 reported that Representative Eaton had come to the</p> <p>20 search warrant, what was his response, if you</p> <p>21 recall?</p> <p>22 A. He was surprised. I think he said something to me</p> <p>23 like you're kidding. It's unbelievable.</p>	<p style="text-align: right;">342</p> <p>1 Q. Okay. Any follow-up?</p> <p>2 A. No. He said, "We'll discuss it later."</p> <p>3 Q. Now, did you know at that point that a second</p> <p>4 search warrant was being considered?</p> <p>5 A. The -- um -- the investigators went there, and</p> <p>6 their goal at the time was to seize video footage,</p> <p>7 three hours of video footage. The licensee, for</p> <p>8 whatever reason, failed to provide the necessary</p> <p>9 video recording. The next day when I came into</p> <p>10 the office I met with the deputy and the major,</p> <p>11 and they told me that we needed to apply for a</p> <p>12 second search warrant. I was a little concerned</p> <p>13 that why, what happened in the first instance,</p> <p>14 particularly knowing that we had interference</p> <p>15 going on with Representative Dan Eaton.</p> <p>16 So we had a healthy discussion in my office --</p> <p>17 in the deputy's office about this search warrant,</p> <p>18 the second search warrant being executed, but I</p> <p>19 was fully aware, and I gave the order to issue it</p> <p>20 to go out with the second search warrant.</p> <p>21 Q. So there was some debate about whether they should</p> <p>22 go for a warrant or not, but ultimately you</p> <p>23 decided that they should go back for a warrant and</p>

<p style="text-align: right;">343</p> <p>1 get the evidence that they were looking for?</p> <p>2 A. Correct.</p> <p>3 Q. Did you tell the Commissioner that you were doing</p> <p>4 that, that you had ordered or approved this second</p> <p>5 search warrant?</p> <p>6 A. No.</p> <p>7 Q. And why not?</p> <p>8 A. It's not something I typically discuss with the</p> <p>9 Commissioners. I -- I -- typically speaking,</p> <p>10 search warrants aren't really discussed with me in</p> <p>11 the department. That authority is given by</p> <p>12 sometimes the deputy, the major or some other</p> <p>13 supervisor. I don't find it necessary to discuss</p> <p>14 it with the Commissioners when we execute a search</p> <p>15 warrant as long as we're doing it appropriately.</p> <p>16 That's the only concern.</p> <p>17 Q. So, typically, in an investigation an investigator</p> <p>18 could seek approval from the deputy and just let</p> <p>19 them -- let the deputy know that they were doing</p> <p>20 it?</p> <p>21 A. Yes.</p> <p>22 Q. It's a routine thing to do search warrants?</p> <p>23 A. Yes. Whenever we have a significant violation,</p>	<p style="text-align: right;">344</p> <p>1 whether it's fatalities involved or serious bodily</p> <p>2 injuries involved, we certainly look for search</p> <p>3 warrants to seize property. We don't necessarily</p> <p>4 need an administrative proceeding, but we obtain</p> <p>5 search warrants to be fair to the licensee.</p> <p>6 Q. Now, did you -- in discussing the second search</p> <p>7 warrant, did you make any preparations or instruct</p> <p>8 anyone to do anything in terms of the second</p> <p>9 search warrant?</p> <p>10 A. In terms of -- um -- after I gave -- issued the</p> <p>11 order to obtain the second search warrant, I went</p> <p>12 back to my office. I thought a moment, and I</p> <p>13 asked the deputy and the major to come in my</p> <p>14 office. I ordered the major to contact the</p> <p>15 Department of -- the Attorney General's Office for</p> <p>16 assistance, and I instructed him not to tell them</p> <p>17 it was Representative Dan Eaton, just to say that</p> <p>18 we had a Representative interfering in our case.</p> <p>19 Q. And why -- why would you say don't give the name</p> <p>20 Dan Eaton or Representative Eaton?</p> <p>21 A. Because I felt very strongly that if the Attorney</p> <p>22 General's Office knew it was Representative Dan</p> <p>23 Eaton interfering, they would not assist.</p>
<p style="text-align: right;">345</p> <p>1 Q. Okay. So -- and what role did you expect the</p> <p>2 Attorney General's Office to play in terms of the</p> <p>3 second search warrant?</p> <p>4 A. Well, I expected them to be involved and provide</p> <p>5 us with either guidance or the necessary</p> <p>6 assistance that I assume your office had in</p> <p>7 investigating legislators when they interfere in</p> <p>8 cases and an office has made a complaint. That's</p> <p>9 the assistance I was seeking. We were -- the</p> <p>10 deputy -- I'm sorry. The major came back and told</p> <p>11 me that his advice that we go and get assistance</p> <p>12 from the State Police, which, in my opinion, was</p> <p>13 unnecessary because at the time we were working</p> <p>14 with the Keene Police Department, a very</p> <p>15 competent, very capable law enforcement agency,</p> <p>16 and our policy is very clear that we always seek</p> <p>17 assistance from the local police department. It</p> <p>18 was unnecessary to get the State Police involved</p> <p>19 because they don't have the jurisdiction like I</p> <p>20 felt the Attorney General's Office had in this</p> <p>21 case.</p> <p>22 Q. Okay. So I just -- that was a long answer. I</p> <p>23 just want to make sure that I understood what you</p>	<p style="text-align: right;">346</p> <p>1 were saying. So you had Major Feyrer call the</p> <p>2 Attorney General's Office, and the information</p> <p>3 that you got back was that the Attorney General's</p> <p>4 Office said call the State Police for</p> <p>5 assistance --</p> <p>6 A. Um-hum.</p> <p>7 Q. -- is that right?</p> <p>8 A. Um-hum.</p> <p>9 Q. And that you didn't think that was necessary</p> <p>10 because you had Keene already lined up for</p> <p>11 assistance, which is your normal procedure; is</p> <p>12 that correct?</p> <p>13 A. Yeah, we had Keene lined up to assist us with the</p> <p>14 search warrant. We needed assistance with the</p> <p>15 interference from Representative Dan Eaton.</p> <p>16 Q. Okay. Now, you -- in fact, Todd Feyrer made that</p> <p>17 call, and you were present for at least part of</p> <p>18 that call, right?</p> <p>19 A. Yes.</p> <p>20 Q. And ultimately, despite your instructions</p> <p>21 otherwise, Major Feyrer told them to -- mentioned</p> <p>22 Dan Eaton's name; is that correct?</p> <p>23 A. Yes, and I was a little upset with him. I said,</p>

<p style="text-align: right;">347</p> <p>1 Why did you give them the name?" He said, "Well,</p> <p>2 he asked me." I go, "I told you not to give them</p> <p>3 the name. Now they're not going to help us."</p> <p>4 Q. Okay. Now, did -- this second search warrant was</p> <p>5 actually executed, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what time it was? Do you have any</p> <p>8 recollection?</p> <p>9 A. No. It was in the late evening.</p> <p>10 Q. And do you know if Keene Police Department</p> <p>11 actually provided backup and assistance?</p> <p>12 A. They absolutely did.</p> <p>13 Q. Okay. And, to your knowledge, were there any</p> <p>14 problems with the execution of that search</p> <p>15 warrant?</p> <p>16 A. No. In fact, I think there was -- um -- one of</p> <p>17 the Keene -- I think he's a sergeant there -- um</p> <p>18 -- Peloquin. Tim Peloquin called me personally to</p> <p>19 tell me that our investigators did a great job,</p> <p>20 and the licensee seemed very upset, a little out</p> <p>21 of control, and he was worried about his video</p> <p>22 equipment.</p> <p>23 Q. Okay. Sir, what was your next contact with the</p>	<p style="text-align: right;">348</p> <p>1 Commissioner concerning the Railroad Tavern?</p> <p>2 A. I received a call from the Chairman. I was in the</p> <p>3 office with the deputy chief and the major, and I</p> <p>4 received a call from the Chairman who had just</p> <p>5 received a call from Representative Dan Eaton.</p> <p>6 Q. Okay. And what did he report to you about that</p> <p>7 call?</p> <p>8 A. He said that Representative Dan Eaton had just</p> <p>9 called him and said our people went down and</p> <p>10 ripped the video equipment out of the walls,</p> <p>11 damaging the property and -- and -- um -- we're</p> <p>12 targeting this licensee.</p> <p>13 Q. Okay. So that was what Representative Eaton was</p> <p>14 relating to Chairman Bodi?</p> <p>15 A. Right.</p> <p>16 Q. Is that what you're saying? And was there any</p> <p>17 discussion at that point about the surveillance</p> <p>18 equipment that had been seized?</p> <p>19 A. We -- we -- I think because he -- Representative</p> <p>20 Eaton had reported to the Chairman that we seized</p> <p>21 the equipment and ripped it out of the wall, and</p> <p>22 so we did have a conversation about the equipment</p> <p>23 -- um -- but it was largely -- um -- around the</p>
<p style="text-align: right;">349</p> <p>1 issue of me saying to the Chairman that is not</p> <p>2 true. We -- that never happened, and you've been</p> <p>3 given false information.</p> <p>4 Q. So you were saying the allegations about ripping</p> <p>5 the -- ripping the surveillance equipment out,</p> <p>6 that that wasn't true?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Do you remember him saying something about</p> <p>9 having to get the surveillance equipment back?</p> <p>10 A. We -- we had a conversation. I don't know the</p> <p>11 details of -- of the conversation that particular</p> <p>12 evening. Um -- I don't -- just don't recall how</p> <p>13 the deputy got into the discussion -- the</p> <p>14 conversation of returning the video equipment.</p> <p>15 This is more -- um -- kind of explaining what had</p> <p>16 gone on, you know, and the Chairman seemed a</p> <p>17 little -- um -- concerned, seemed a little</p> <p>18 concerned because he was getting this call from</p> <p>19 Representative Dan Eaton that we had acted</p> <p>20 inappropriate.</p> <p>21 Q. Now, you said that the Commissioner was a little</p> <p>22 concerned. In fact, he was a lot more than just</p> <p>23 concerned, wasn't he?</p>	<p style="text-align: right;">350</p> <p>1 A. He seemed panicked, yeah.</p> <p>2 Q. He seemed panicked. And I think you've used words</p> <p>3 in the past describing him as hypersensitive,</p> <p>4 hyperconcerned, panicked, and in one -- um --</p> <p>5 excuse my language, but he was scared shitless.</p> <p>6 Those were words that you've used for describing</p> <p>7 him; isn't that correct?</p> <p>8 A. Yes, and the reason that is because I think I've</p> <p>9 watched the Chairman over -- over a year become --</p> <p>10 you know, in my opinion, I think he's done</p> <p>11 everything he could do to stop this type of</p> <p>12 onslaught from Representative Dan Eaton with</p> <p>13 legislation, with creating our own ethics policies</p> <p>14 internally, going out and just trying to craft</p> <p>15 ways to address almost every possible rumor that</p> <p>16 could be fought against. And they were all</p> <p>17 rumors. None of those things were true. And so I</p> <p>18 saw a person grow more and more beaten down, if</p> <p>19 you will, with the lack of assistance he was</p> <p>20 receiving from other divisions in the State</p> <p>21 Government as well as the Legislature.</p> <p>22 Q. But as you said, he was panicked.</p> <p>23 A. Right.</p>

<p style="text-align: right;">351</p> <p>1 Q. He was scared shitless about what was going to 2 happen, right? 3 A. Oh, yeah. 4 Q. And he kept saying to you there's going to be 5 trouble. So there was some discussion about 6 returning the equipment that night, correct? 7 A. Correct. 8 Q. Or you don't recall? You do. 9 A. There was some discussion. I just don't recall 10 the details of it. 11 Q. Okay. And you told him flat-out we didn't rip the 12 -- um -- we didn't rip the equipment off the wall. 13 There were no problems with the search warrant. 14 A. Right. Part of this was -- um -- during our 15 conversation, Dan Eaton had told the Chairman that 16 he felt that I had personally attacked him, tried 17 to embarrass him in his backyard, those type of 18 things, that this is me going out there after his 19 friends and things like that, and so I think the 20 Chairman was very concerned about this because he 21 fought really hard in the Legislature to maintain 22 the balance in our state so that we could produce 23 revenue, and so I think he was focused on that,</p>	<p style="text-align: right;">352</p> <p>1 and unfortunately, as I said, he kept getting 2 pressure from Dan Eaton. 3 Q. And so when you heard these things and the idea 4 that you were targeting -- that you were targeting 5 Representative Eaton, did you explain to him that 6 that wasn't accurate? 7 A. Yes, I -- if I stated I was targeting Dan Eaton, I 8 was targeting him, I misspoke. Dan Eaton thought 9 I was targeting his friends. 10 Q. I beg your pardon. I may have done that. 11 A. Yes. Yes, I certainly told him that, and I told 12 him most of the things he told you were not true. 13 Q. And, in fact, you had search warrants that 14 established why you were going into the Railroad 15 Tavern, and all of the facts were laid out there, 16 correct? 17 A. Correct. We were operating off a complaint. The 18 residents that were adjacent to the Railroad 19 Tavern had complained about the Railroad Tavern's 20 behavior for more than two years. They tried to 21 work with the Keene Police Department. The Keene 22 Police Department did all they could. We were 23 contacted, and we were doing an investigation at</p>
<p style="text-align: right;">353</p> <p>1 the request of the residents who live there. 2 In fact, we had a meeting with the licensee, 3 the residents to try to resolve this issue, this 4 dispute, and we set up surveillance on the 5 establishment. One of the investigators observed 6 someone being carried out who had been overserved, 7 and that's when we started, but Dan Eaton felt 8 that this was our agency personally targeting this 9 establishment. 10 Q. Now -- so this was all -- you were having this 11 conversation with the -- Commissioner Bodi. How 12 did that conversation end? Do you recall? 13 A. I think we -- that night we just kind of said 14 we'll talk about it tomorrow. 15 Q. All right. So the next day, which would have been 16 Wednesday -- do you need some water? 17 A. No, I'm good. 18 Q. Okay. 19 A. Thanks. 20 Q. Did you have a conversation with Commissioner 21 Bodi? 22 A. Yes. 23 Q. Okay. And where was that meeting or that</p>	<p style="text-align: right;">354</p> <p>1 conversation? How did that take place? 2 A. We met at his office. 3 Q. And how long do you think you talked to him? 4 MR. MCLAUGHLIN: I'm sorry, counsel. I'm 5 having a little trouble hearing. 6 MS. RICE: How long do you think that you 7 talked to him? 8 MR. MCLAUGHLIN: Thank you. 9 THE WITNESS: I -- I don't recall, but we 10 were there for a while. I just don't recall how 11 long. 12 BY MS. RICE: 13 Q. Okay. What was the context of that conversation? 14 What did you discuss? 15 A. We discussed what was going on with the case. We 16 discussed that in terms of Dan Eaton's 17 involvement, I was upset, and I think the Chairman 18 was concerned, and so we had conversations about 19 the second search warrant. We had conversations 20 about when did -- when I got the complaint. I 21 think the Chairman wanted more facts, when the 22 complaint came into our office, how long did we 23 wait before we started the investigation and</p>

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1 things of that nature.

2 Q. Did you -- did he want to look at the complaint?

3 A. No. Well, I don't know if he wanted a copy. I

4 don't recall that. He may have. It doesn't seem

5 unusual that the Chairman would ask to see. He's

6 a very punctilious person, so I assume -- yeah, it

7 wouldn't be outside of his nature to ask for

8 something. He's a factual person, so yeah, he may

9 have asked for it. I don't recall, but it

10 wouldn't be unusual for him to ask for it. You

11 mean the complaint from the residents?

12 Q. The complaint from the residents --

13 A. Right.

14 Q. -- yes. Now, you were deposed back on August 30th

15 of 2010; isn't that correct?

16 A. Yes.

17 Q. And at some point during that deposition I asked

18 you whether Commissioner Bodi at any point asked

19 to see any of the search warrants or other

20 documents relating to this investigation. Do you

21 recall that question?

22 A. No. But if you asked me that, you asked me.

23 Yeah, I assume you asked me. I don't recall that

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1 A. So I'm confused.

2 Q. All right. Well, we'll go back over that in just

3 a minute, but I want to move on right now to the

4 discussion about having the equipment returned.

5 A. All right.

6 Q. Okay. That discussion came up on Wednesday again,

7 correct?

8 A. Yes.

9 Q. And how did that come up, and what was the nature

10 of that conversation?

11 A. Um -- that came up around a phone call, I believe,

12 and I'm not sure who called who. I'm not sure if

13 the Chairman called Representative Eaton or

14 Representative Eaton called the Chairman. But we

15 were in his office. He was on the phone with

16 Representative Dan Eaton.

17 Q. Okay. And so what was the discussion about

18 returning the equipment?

19 A. I -- I was sitted -- seated at the table in the

20 Chairman's office. The Chairman was standing some

21 distance away from me. Maybe the distance between

22 us and maybe a little closer but fairly close to

23 this distance. And I could hear the voice of

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1 particular question.

2 Q. Okay. So you wouldn't dispute that I asked that?

3 A. No.

4 Q. And would you dispute the fact that you answered

5 that you were sort of surprised that he didn't ask

6 for any of those -- any of the underlying

7 documents?

8 A. If that was my answer at the time, yeah.

9 Q. Okay.

10 A. But if you're asking if he asked for -- you just

11 said search warrants. Earlier you asked me about

12 the complaint.

13 Q. That's correct. And my question to you during the

14 deposition was did he ask for anything. Did he

15 ask for anything about the underlying

16 investigation to review?

17 A. I -- I guess I would have to look at my

18 question -- the question you asked and my answer

19 again because you asked me earlier about a

20 complaint, and then you asked me -- mentioned the

21 search warrant and asked about the search warrant,

22 and now you're saying any underlying documents.

23 Q. Okay.

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1 Representative Dan Eaton. Clearly, I couldn't

2 make out what he was saying, but I could hear his

3 voice through the phone. And I heard the Chairman

4 say, "The equipment -- the equipment will be

5 returned" -- um -- to Representative Dan Eaton.

6 He was calling to say -- um -- that Sergeant

7 Fussell had informed Randy Filiault, the licensee

8 of Railroad Tavern, that he wouldn't be getting

9 his equipment back until they were done with it,

10 and that's, I guess, what motivated the call from

11 Representative Eaton to the Chairman saying I

12 thought he was getting his equipment back. I want

13 his equipment back. That nature.

14 Q. So when he said he's going to get his equipment

15 back, when Commissioner Bodi said that to

16 Representative Eaton, what was your reaction?

17 A. I just nodded my head no.

18 Q. You just --

19 A. I nodded my head. We can't give the equipment

20 back.

21 Q. So you shook your head like no, he's not getting

22 it back, okay. And did you follow up on that

23 discussion after the phone call ended?

<p style="text-align: right;">359</p> <p>1 A. Yes.</p> <p>2 Q. And what was the nature of that call? I mean what</p> <p>3 was the nature of that conversation?</p> <p>4 A. The Chairman said -- um -- "You heard me. We got</p> <p>5 to get the equipment back to him." I go, "We</p> <p>6 don't have our evidence yet. We can't return the</p> <p>7 equipment."</p> <p>8 Q. And he eventually ordered you to return the</p> <p>9 equipment; isn't that correct?</p> <p>10 A. Yeah, he said we needed the equipment returned,</p> <p>11 right.</p> <p>12 Q. He ordered you to return it.</p> <p>13 A. Right.</p> <p>14 Q. Okay.</p> <p>15 A. Yeah.</p> <p>16 Q. Despite the fact that you said we can't return</p> <p>17 it. We don't have our evidence yet.</p> <p>18 A. Right.</p> <p>19 Q. So after being ordered to return that equipment,</p> <p>20 what did you do?</p> <p>21 A. I called Todd Feyrer, who's the major. I</p> <p>22 instructed Todd Feyrer to have the equipment -- um</p> <p>23 -- returned to Railroad Tavern after we secured</p>	<p style="text-align: right;">360</p> <p>1 the video footage from it, but it had to go back</p> <p>2 today.</p> <p>3 Q. So you told Major Feyrer that it had to go back</p> <p>4 today. And did you find out the status of the</p> <p>5 downloading of the video footage?</p> <p>6 A. I think he told me that they were almost done with</p> <p>7 it and that the investigators were in Keene</p> <p>8 finishing up interviews, and I said, "Take the</p> <p>9 equipment to Keene. Have them finish it up in</p> <p>10 Keene, and return the equipment."</p> <p>11 Q. And, in fact, you ordered overtime to -- you</p> <p>12 authorized overtime to get it done, right?</p> <p>13 A. Correct.</p> <p>14 Q. Why didn't you just say no to the Commissioner? I</p> <p>15 can't return it.</p> <p>16 A. Well, I informed the Commissioner we couldn't</p> <p>17 return the equipment at this time. Um -- I don't</p> <p>18 think I'm in a position to tell any Commissioner</p> <p>19 no.</p> <p>20 Q. Well, you have a responsibility as a law</p> <p>21 enforcement -- the Director of Law Enforcement to</p> <p>22 protect the integrity of an investigation, don't</p> <p>23 you?</p>
<p style="text-align: right;">361</p> <p>1 A. And I did so. Right. And I did so in two</p> <p>2 separate instances. I called your office and</p> <p>3 asked for assistance. That was my first attempt</p> <p>4 to protect the integrity of our investigation, and</p> <p>5 you failed to assist. The second time is when I</p> <p>6 told the Chairman we couldn't give it back.</p> <p>7 Q. Director Edwards, I understand that you disagree</p> <p>8 with what our office did, but by returning</p> <p>9 evidence when you are not -- returning the video</p> <p>10 equipment before you are able to get the video</p> <p>11 footage would have interfered with the integrity</p> <p>12 of your investigation; is that correct?</p> <p>13 A. If we had returned the video equipment before we</p> <p>14 seized our evidence, absolutely.</p> <p>15 Q. Absolutely.</p> <p>16 A. That didn't happen, though.</p> <p>17 Q. I understand it did not happen. But the</p> <p>18 Commissioner was ordering you to do that, and he</p> <p>19 had no idea of whether you could get that download</p> <p>20 done or not.</p> <p>21 A. I never discussed that with him, no.</p> <p>22 Q. You never discussed it?</p> <p>23 A. No.</p>	<p style="text-align: right;">362</p> <p>1 Q. You knew he knew that you didn't have the</p> <p>2 evidence, and he ordered you to return it, and you</p> <p>3 never discussed about whether the practicalities</p> <p>4 of getting that done?</p> <p>5 A. No, I never discussed it with him about how we</p> <p>6 were going to do it.</p> <p>7 Q. Did --</p> <p>8 A. I received the order, and my job was to get it</p> <p>9 done. And we secured our evidence. We secured</p> <p>10 the integrity of the case, and the video equipment</p> <p>11 was returned.</p> <p>12 Q. Okay. And that -- that process of returning</p> <p>13 evidence within approximately 27 hours of it being</p> <p>14 seized is very unusual, isn't it?</p> <p>15 A. Yes, a lot faster than we normally work, yes.</p> <p>16 Q. And if this had been a normal case, how would that</p> <p>17 evidence have been processed?</p> <p>18 A. The -- we would have seized our evidence like we</p> <p>19 attempted to do in the first instance. We only</p> <p>20 wanted the video footage. Once we secured that</p> <p>21 video footage, the licensee could have asked for</p> <p>22 the equipment to be returned to him on their own.</p> <p>23 They would have received that equipment. If we</p>

<p style="text-align: right;">363</p> <p>1 found that we were done with it, we would have</p> <p>2 given it back to them.</p> <p>3 Q. And before you give it back what do you normally</p> <p>4 do?</p> <p>5 A. In most instances we obtain a Petition from the</p> <p>6 Court.</p> <p>7 Q. So you file a Motion with the Court asking for</p> <p>8 permission to turn it back?</p> <p>9 A. In most instances.</p> <p>10 Q. In most instances. Chief Edwards, I just want to</p> <p>11 make clear and have it -- the Commission -- excuse</p> <p>12 me -- the Council to understand. You really feel</p> <p>13 that this proceeding against Commissioner is</p> <p>14 unfair, don't you?</p> <p>15 A. I -- I think it's -- yes. What I've observed the</p> <p>16 Chairman go through over a year and a half, I</p> <p>17 think it's highly unfair. I think when you see</p> <p>18 someone working in government to try to do</p> <p>19 everything possible he could do to change it,</p> <p>20 Commissioner Bodi was the first Commissioner,</p> <p>21 because I've been at the Commission, to hold</p> <p>22 senior level people accountable, so I think --</p> <p>23 Q. I'm sorry.</p>	<p style="text-align: right;">364</p> <p>1 MR. MCLAUGHLIN: Let him finish.</p> <p>2 MS. RICE: I just apologized, and I'm</p> <p>3 going to let him finish.</p> <p>4 BY MS. RICE:</p> <p>5 Q. I interrupted you.</p> <p>6 A. So in my instance -- from my perspective, I think</p> <p>7 Chairman Bodi did all he could do. I think he</p> <p>8 was -- he crafted ethics policies for every</p> <p>9 division to follow, our marketing division, our</p> <p>10 store operations, our enforcement, our license and</p> <p>11 our education. He expected a lot. He demanded a</p> <p>12 lot. But he led by example. He's the only</p> <p>13 Commissioner I've ever seen work till nine o'clock</p> <p>14 at night. He had high expectations, and because</p> <p>15 of his leadership I think you see the results of</p> <p>16 it. This year the New Hampshire Liquor</p> <p>17 Commission --</p> <p>18 Q. So you're --</p> <p>19 A. -- revenues far exceeded expectations, and our</p> <p>20 Enforcement Division was ranked over the last two</p> <p>21 years as the top law enforcement agency in the</p> <p>22 country on alcohol enforcement.</p> <p>23 Q. Did you have a little script written for that?</p>
<p style="text-align: right;">365</p> <p>1 A. I don't have a script. I've repeated this to you</p> <p>2 in your office a number of times.</p> <p>3 Q. That's correct.</p> <p>4 A. And I've seen the failure in your office to help</p> <p>5 us.</p> <p>6 Q. Chief Edwards, you come here today, and I'm asking</p> <p>7 you questions. I'm asking you questions about you</p> <p>8 maintaining the integrity of a law enforcement</p> <p>9 investigation; isn't that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you understand that we are here because we</p> <p>12 allege that what Commissioner Bodi did was</p> <p>13 interfere with a law enforcement investigation,</p> <p>14 something that you are overseeing --</p> <p>15 A. Yes.</p> <p>16 Q. -- correct? Now, he ordered you to return</p> <p>17 evidence in 27 hours, which is very atypical of an</p> <p>18 investigation. You just testified to that.</p> <p>19 A. He ordered equipment to be returned, not</p> <p>20 evidence. There's a distinction.</p> <p>21 Q. Well, it was evidence until you got the video</p> <p>22 footage from the equipment, right?</p> <p>23 A. Right.</p>	<p style="text-align: right;">366</p> <p>1 Q. Until you were able to download that equipment --</p> <p>2 download the footage, that surveillance equipment</p> <p>3 was evidence in your case, and you needed it.</p> <p>4 A. We did not need the video equipment. We needed</p> <p>5 the video footage from the case. That's what we</p> <p>6 sought in the first search warrant. That's what</p> <p>7 we sought in the second search warrant. And, in</p> <p>8 fact, when we returned with the second search</p> <p>9 warrant we gave the licensee an opportunity to</p> <p>10 download the video footage again, but he refused</p> <p>11 to cooperate. We seized the video surveillance</p> <p>12 equipment to take the evidence from him.</p> <p>13 Q. And I think that the Councilors and the Governor</p> <p>14 have heard that in fact you weren't able to</p> <p>15 download it, and that's why you had to take the</p> <p>16 video surveillance equipment.</p> <p>17 A. Right.</p> <p>18 Q. The only reason that you took it was because you</p> <p>19 needed the evidence that was in that video</p> <p>20 surveillance equipment.</p> <p>21 A. Correct.</p> <p>22 Q. Now, it's pretty standard or typical that evidence</p> <p>23 is often held until the disposition of a case,</p>

<p style="text-align: right;">367</p> <p>1 correct?</p> <p>2 A. If it's evidence -- if it has no evidentiary value</p> <p>3 to the agency any longer, like in most of our</p> <p>4 cases -- most of our cases along with half the</p> <p>5 police departments in this state. If your</p> <p>6 evidence has no evidentiary value to your case,</p> <p>7 you release it. And the law allows for that</p> <p>8 because certainly if the law did not allow for</p> <p>9 that, I'm certain your agency would have charged</p> <p>10 Commissioner Bodi if he hadn't broken the law.</p> <p>11 Q. You're going to fight me all the way here.</p> <p>12 A. No, I'll answer your questions all the way.</p> <p>13 Q. RSA 595-A:6 talks about evidence that's seized</p> <p>14 pursuant to a search warrant, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Anything that is taken into custody, police</p> <p>17 custody --</p> <p>18 A. Yes.</p> <p>19 Q. -- right?</p> <p>20 A. With or without a search warrant.</p> <p>21 Q. With or without a search warrant.</p> <p>22 A. Right.</p> <p>23 Q. And then when you need to return it, you can take</p>	<p style="text-align: right;">368</p> <p>1 pictures of it if it's -- and then return it or</p> <p>2 you can -- you can hold it until the end of the</p> <p>3 case, right, if it has evidentiary value?</p> <p>4 A. But the law says if it has evidence, you maintain</p> <p>5 that with a search warrant or any other means. If</p> <p>6 you come across it legally, you are to retain it</p> <p>7 to produce it as evidence.</p> <p>8 Q. Correct.</p> <p>9 A. Not evidentiary value of the equipment.</p> <p>10 Q. Until you get authorization.</p> <p>11 A. It doesn't speak to not evidentiary returning.</p> <p>12 Q. Well, we'll let the Councilors and the Governor</p> <p>13 determine what they read that statute to mean.</p> <p>14 A. Your office is doing the same thing.</p> <p>15 Q. There's no question pending.</p> <p>16 A. Okay.</p> <p>17 Q. Excuse me. Okay. And if you had not received an</p> <p>18 order to return that equipment, where would that</p> <p>19 equipment be now?</p> <p>20 A. It would have been in two places possibly. One,</p> <p>21 if the licensee hadn't asked for the equipment to</p> <p>22 be returned, it would probably be in our evidence</p> <p>23 room. If the licensee had asked for the equipment</p>
<p style="text-align: right;">369</p> <p>1 to be returned, it would have been returned to</p> <p>2 him.</p> <p>3 Q. Okay. So without an order it might have been</p> <p>4 still in the evidence storage.</p> <p>5 A. Right.</p> <p>6 Q. Did you have any conversation with Commissioner</p> <p>7 Bodi on December 17th, which is that Thursday,</p> <p>8 about what was going to happen regarding the</p> <p>9 Railroad Tavern?</p> <p>10 A. I'm assuming I did. I just don't recall</p> <p>11 December 17th specifically.</p> <p>12 Q. Do you recall having a conversation with</p> <p>13 Commissioner Bodi about the fact that you were</p> <p>14 going to serve the Railroad Tavern?</p> <p>15 A. Oh, yes. Yeah.</p> <p>16 Q. And what was that? Describe that conversation.</p> <p>17 A. We talked about -- well, I informed him that we</p> <p>18 were going to serve a notice to the Railroad</p> <p>19 Tavern that they had overserved a patron.</p> <p>20 Q. And notice means what?</p> <p>21 A. Administrative notice means that the licensee is</p> <p>22 put on notice that they have -- there's a pending</p> <p>23 case before the Liquor Commission.</p>	<p style="text-align: right;">370</p> <p>1 Q. Okay. So it was basically your determination that</p> <p>2 you were going to pursue some sort of an</p> <p>3 enforcement action, regulatory action against</p> <p>4 them?</p> <p>5 A. Oh, yes.</p> <p>6 Q. Okay. And what was Commissioner Bodi's response</p> <p>7 on that Thursday when you told him about that?</p> <p>8 A. I don't recall specifically, but if I'd given an</p> <p>9 answer, I would like to hear it. I just don't</p> <p>10 recall specifically.</p> <p>11 Q. Well, let me -- let me just ask you. Was</p> <p>12 Commissioner Bodi anxious to have a charge served</p> <p>13 on the Railroad Tavern?</p> <p>14 A. I -- I don't think, based off my experience with</p> <p>15 any Commissioner, that they're anxious to see</p> <p>16 charges brought against licensees. I don't think</p> <p>17 with my conversation with the Chairman he would</p> <p>18 have been anxious to have a charge brought</p> <p>19 against.</p> <p>20 Q. Even if they thought you had a reasonable case</p> <p>21 against a licensee, they don't want to have you</p> <p>22 charge them?</p> <p>23 A. They're not aware when we have a reasonable case.</p>

<p style="text-align: right;">371</p> <p>1 They're just not aware when we have a reasonable</p> <p>2 case.</p> <p>3 Q. So as of the 17th he would not have been aware of</p> <p>4 whether you had a reasonable case; is that</p> <p>5 correct?</p> <p>6 A. He was aware we had a case. He -- yes, he was</p> <p>7 aware we had a case against a licensee, but I'm</p> <p>8 just not -- I don't see any Commissioner, the</p> <p>9 Chairman or any other Commissioner that I've</p> <p>10 worked under, anxious to see charges brought</p> <p>11 against licensees.</p> <p>12 Q. So let me -- let me ask you. What's the normal</p> <p>13 course of events for an investigation? If you --</p> <p>14 they had done some search warrants.</p> <p>15 A. Um-hum.</p> <p>16 Q. I believe that you testified that Sergeant Fussell</p> <p>17 was out doing --</p> <p>18 A. Yeah.</p> <p>19 Q. -- additional interviews; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And then what's the normal process for an</p> <p>22 investigation? How does it eventually conclude in</p> <p>23 some sort of an administrative notice?</p>	<p style="text-align: right;">372</p> <p>1 A. Um -- if the investigators that night, they're</p> <p>2 there themselves, and they observe a violation,</p> <p>3 they'll issue the notice that night. If it's an</p> <p>4 investigation like this where we have to</p> <p>5 interviews folks, they'll finish off the</p> <p>6 investigations. They'll review the case with</p> <p>7 their supervisors. The report will be approved.</p> <p>8 It will come to my desk. I will look at it. If</p> <p>9 the case is fully developed, it will go on the</p> <p>10 Commission's agenda as either a settlement or a</p> <p>11 pending hearing case.</p> <p>12 Q. So when you decided that an order would issue on</p> <p>13 the 17th, did you know if the -- were you able to</p> <p>14 say that the case had been fully developed?</p> <p>15 A. On -- on the 17th, I thought we had enough</p> <p>16 information to issue a notice.</p> <p>17 Q. Okay.</p> <p>18 A. And I certainly wanted the notice issued.</p> <p>19 Q. Why did you want the notice issued?</p> <p>20 A. Because of the amount of interference from</p> <p>21 Representative Dan Eaton.</p> <p>22 Q. Okay. Did Commissioner Bodi at any time sort of</p> <p>23 suggest that maybe he didn't want a notice issued?</p>
<p style="text-align: right;">373</p> <p>1 A. I -- I don't recall the Commissioner ever telling</p> <p>2 me not to issue a notice.</p> <p>3 Q. Do you recall him implying that he didn't want a</p> <p>4 notice issued?</p> <p>5 A. No. I -- I don't recall the Commissioner or any</p> <p>6 Commissioner ever saying they don't want notice</p> <p>7 issued. I know we've had conversations, and I</p> <p>8 believe in this case, in this instance here, too,</p> <p>9 where the Chairman said, "Can you reach a</p> <p>10 settlement agreement? Try to work it out with</p> <p>11 him," with the licensee. And that's part of our</p> <p>12 administrative rules process, but I don't think</p> <p>13 he's ever said to me not to issue a notice.</p> <p>14 Q. Okay. I'm just looking at your statements here</p> <p>15 that you gave to the AG's Office, and if you'll</p> <p>16 just give me a minute here.</p> <p>17 A. Sure.</p> <p>18 MR. MCLAUGHLIN: Governor?</p> <p>19 GOVERNOR LYNCH: Yes.</p> <p>20 MR. MCLAUGHLIN: While counsel is</p> <p>21 looking, I realize that you don't regularly</p> <p>22 preside, but there is a tradition in Superior</p> <p>23 Court that attorneys over 60 are given a break</p>	<p style="text-align: right;">374</p> <p>1 once every hour or so.</p> <p>2 GOVERNOR LYNCH: And you're looking for a</p> <p>3 break, asking whether this extends to the</p> <p>4 Legislative Office Building.</p> <p>5 MR. MCLAUGHLIN: I hope you will make a</p> <p>6 decision fairly quickly, I might add.</p> <p>7 GOVERNOR LYNCH: Okay. Let's take a</p> <p>8 break for five minutes.</p> <p>9 (The proceedings are recessed at</p> <p>10 10:40 a.m.)</p> <p>11 (The proceedings resume on the record at</p> <p>12 10:47 a.m.)</p> <p>13 GOVERNOR LYNCH: All right. Why don't we</p> <p>14 continue, if we could, please. Attorney</p> <p>15 McLaughlin, I will remember that tradition for the</p> <p>16 remainder of this hearing, Attorney McLaughlin.</p> <p>17 MR. MCLAUGHLIN: Thank you, Your Honor.</p> <p>18 BY MS. RICE:</p> <p>19 Q. Okay. Director Edwards, I was talking to you</p> <p>20 before the break about your decision to file</p> <p>21 charges. And do you recall when the -- when the</p> <p>22 administrative notice was actually filed?</p> <p>23 A. It would have been -- um -- shortly after I had</p>

<p style="text-align: right;">375</p> <p>1 the -- the equipment was returned.</p> <p>2 Q. Okay. So if I told you that it was filed on the</p> <p>3 17th, would you disagree with that?</p> <p>4 A. Nope.</p> <p>5 Q. Okay. And you said that you -- you said that you</p> <p>6 filed the charge -- you decided to file the charge</p> <p>7 quickly because of all the circumstances around</p> <p>8 it, right?</p> <p>9 A. That's correct.</p> <p>10 Q. That Representative Eaton had been calling --</p> <p>11 A. Correct.</p> <p>12 Q. -- the Commissioner. But the Commissioner also</p> <p>13 implied to you don't bring a charge, didn't he?</p> <p>14 A. I don't recall the Commissioner telling me not to</p> <p>15 bring a charge. I recall the Commissioner telling</p> <p>16 me to work something out, see if we can work</p> <p>17 something out in a settlement agreement. I don't</p> <p>18 specifically recall him saying don't bring a</p> <p>19 charge.</p> <p>20 Q. Well, let me just ask you. You remember giving a</p> <p>21 statement to our office back in January of this</p> <p>22 year; isn't that correct?</p> <p>23 A. Yes, I interviewed with Attorney Jane Young and</p>	<p style="text-align: right;">376</p> <p>1 Detective Dick Tracy.</p> <p>2 Q. That's correct. Okay. And it was recorded.</p> <p>3 A. Yes, I recorded it, and they recorded it, too.</p> <p>4 Q. You both recorded that. And during that do you</p> <p>5 remember Attorney Young specifically asking you,</p> <p>6 "Are you not" -- "Are you asked not to bring a</p> <p>7 charge?"</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And do you recall what your answer was on</p> <p>10 that?</p> <p>11 A. Nope.</p> <p>12 Q. Okay. So she asked you, "Are you not" --</p> <p>13 MR. MCLAUGHLIN: Counsel, page, please.</p> <p>14 MS. RICE: This is page seven of day two.</p> <p>15 MR. MCLAUGHLIN: I'm sorry? What's the</p> <p>16 Bates stamp?</p> <p>17 MS. RICE: I don't have a Bate stamp,</p> <p>18 Phil.</p> <p>19 MR. MCLAUGHLIN: Okay. Can you just give</p> <p>20 me a second then?</p> <p>21 MS. RICE: I'm sorry. I think I said day</p> <p>22 two. I mean day one. It's day one of his</p> <p>23 interview.</p>
<p style="text-align: right;">377</p> <p>1 MS. CUSACK: But tape two.</p> <p>2 MS. RICE: No. Tape one.</p> <p>3 MS. CUSACK: Tape -- okay.</p> <p>4 MR. MCLAUGHLIN: Tape one?</p> <p>5 MS. RICE: Tape two, page seven.</p> <p>6 MR. MCLAUGHLIN: Thank you. Does it</p> <p>7 begin, "It depends," upper left corner?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MS. RICE: That page.</p> <p>10 MR. MCLAUGHLIN: Thank you very much.</p> <p>11 BY MS. RICE:</p> <p>12 Q. So Jane Young asked you, "Were you not" -- "You</p> <p>13 were asked not to bring a charge, correct?"</p> <p>14 A. Right.</p> <p>15 Q. And your response to that was?</p> <p>16 A. "No, the Chairman never asked me directly not to</p> <p>17 bring a charge. What he said is there -- is there</p> <p>18 a way that we can hold off on this? Is there a</p> <p>19 way that we can -- um -- make it maybe work some</p> <p>20 out -- something out with him." Right.</p> <p>21 Q. Can you read the rest of it?</p> <p>22 A. "Is there a way I was ordered to make it go away</p> <p>23 but not do it not directly."</p>	<p style="text-align: right;">378</p> <p>1 Q. Okay. It's implied.</p> <p>2 A. It's implying.</p> <p>3 Q. So what you're saying there is it's implied.</p> <p>4 Certainly the Chairman never asked you directly to</p> <p>5 not bring a charge.</p> <p>6 A. Correct.</p> <p>7 Q. But there was a clear implication from his</p> <p>8 questions that he wanted to make this matter go</p> <p>9 away, right?</p> <p>10 A. Right. In a settlement agreement.</p> <p>11 Q. Well, he wants to make it go away. Regardless of</p> <p>12 what you do with it, he wants to make it go away,</p> <p>13 right?</p> <p>14 A. Right.</p> <p>15 Q. And what did you tell him when he suggested that</p> <p>16 he wanted it to go away?</p> <p>17 A. What he asked -- I said to him, "We" -- "This type</p> <p>18 of team won't work out a settlement agreement. He</p> <p>19 won't agree to anything."</p> <p>20 Q. So what did that mean, that you have to issue</p> <p>21 notice?</p> <p>22 A. No, that we have to go forward with the hearing.</p> <p>23 Q. And that was your decision, correct?</p>

<p style="text-align: right;">379</p> <p>1 A. Well, ultimately it's the Commissioners' decision 2 what we have a hearing on. It's their decision. 3 It's my decision to make a recommendation to hold 4 a hearing, but it's the Commissioners' decision to 5 decide if we have a hearing. 6 Q. Okay. And you made a recommendation for a 7 hearing; is that right? 8 A. Right. 9 Q. Okay. Now, what's the next step? When you issue 10 an administrative order like was issued here, 11 what's the next step? 12 A. A hearing is scheduled. 13 Q. And the administrative order says something to the 14 effect of you need to call the office within five 15 days, right? 16 A. Right. There's a notification on the notice that 17 says you must call the office within five days if 18 you would like to schedule a hearing. 19 Q. Okay. And if you don't want to schedule a 20 hearing, what happens then if they don't want to? 21 A. Then our office will call the licensee to say are 22 you interested in a hearing or do you want to work 23 this out?</p>	<p style="text-align: right;">380</p> <p>1 Q. What happened in this case? 2 A. I think we just called the licensee. We gave them 3 a number -- well, in this case it was a little 4 awkward because we had the guidance to the point 5 where we were going to have that discussion 6 because your office had began a criminal 7 investigation, and -- um -- when I met with 8 Attorney Jane Young and Detective Dick Tracy I 9 offered to withhold our administrative case until 10 your office completed its criminal case. I knew 11 they lack experience in this area, so I was 12 willing to withhold our case and let them finish 13 their criminal case. And in that instance they 14 said, "No, we'll be done with this criminal case 15 in a matter of a couple weeks, and you can go 16 forward with your administrative case." 17 So it was the end of that meeting -- this is, 18 I think, in November, so I -- um -- I instructed 19 my legal assistant to call the licensee and 20 schedule it for a hearing. Just tell him we're 21 going right to a hearing with this. We're not 22 going to do a settlement agreement. 23 Q. Okay. So you made a decision to go forward to a</p>
<p style="text-align: right;">381</p> <p>1 hearing. And in a hearing does the licensee have 2 an opportunity to present evidence to the 3 Commission? 4 A. Right. Some licensees have asked State 5 Representatives to come in and testify on their 6 behalf. Some licensees have brought -- sometimes 7 they come with two attorneys. 8 Q. So if a licensee felt like the Liquor Enforcement 9 was targeting them or did something incorrect or 10 improper during the investigation, would that have 11 been something that could be aired in the -- the 12 hearing process? 13 A. Oh, correct. 14 Q. And did the -- and in this case did that hearing 15 ever take place? 16 A. No, the licensee moved to surrender his license. 17 We -- um -- contacted the licensee's attorney. 18 They agreed to not seek a liquor license in the 19 State of New Hampshire for the next five years or 20 work in a licensed establishment that sells 21 alcohol for the next five years. That was a term 22 of the disposal of that case. 23 Q. I just want to cover a little bit here. I asked</p>	<p style="text-align: right;">382</p> <p>1 you -- well, you're aware, aren't you, that 2 ultimately your investigators filed a letter -- 3 excuse me -- filed a letter complaining about the 4 results in this case? That they felt that there 5 was political influence in terms of the order to 6 return evidence; isn't that correct? 7 A. They came to the deputy, who ultimately came to me 8 and said that the investigators were upset, and I 9 agree. They were -- they were harassed and 10 intimidated in their work environment, and I 11 supported that. 12 Q. You supported the fact that they were harassed and 13 intimidated? 14 A. No, no. I supported the fact that they were going 15 to file a complaint. 16 Q. Okay. 17 A. Yeah. They only get harassed by me, but I -- the 18 investigators. But I meant that I supported them 19 filing a complaint to bring forth charges that 20 there's political influence in their case. And, 21 in fact, the union, who represents the liquor 22 investigators, they sought the advice of the FBI. 23 They did not want to go to your office or file a</p>

<p style="text-align: right;">383</p> <p>1 complaint within State Government. They sought</p> <p>2 assistance from the Federal Government to bring</p> <p>3 charge.</p> <p>4 Q. And the complaints were not only that</p> <p>5 Representative Eaton had appeared in terms of in</p> <p>6 front of the -- during the search warrant process,</p> <p>7 but, also, that they'd been ordered to return</p> <p>8 evidence in a case, correct?</p> <p>9 A. Right.</p> <p>10 Q. And you encouraged them or supported the fact that</p> <p>11 they wrote that letter to the union, correct?</p> <p>12 A. I supported them. Absolutely.</p> <p>13 Q. And, in fact, you supported the fact that they</p> <p>14 were complaining about the fact that evidence had</p> <p>15 been returned in a case.</p> <p>16 A. Equipment had been returned.</p> <p>17 Q. And you supported the fact that they were</p> <p>18 complaining about that.</p> <p>19 A. Right.</p> <p>20 Q. Because you thought it was improper the way the</p> <p>21 case had been -- the way that the evidence had</p> <p>22 been handled.</p> <p>23 A. I thought that was wrong, and I -- that's why I</p>	<p style="text-align: right;">384</p> <p>1 supported them because I thought maybe along the</p> <p>2 way all of it was wrong. It was wrong, the</p> <p>3 failure on your office part, the failure of Dan</p> <p>4 Eaton -- Representative Dan Eaton interfering.</p> <p>5 All those things were wrong. But technically what</p> <p>6 Chairman Bodi asked to be done, your office does</p> <p>7 every today.</p> <p>8 Q. So you were quoted at some point as applauding</p> <p>9 their courage in bringing this to the light of</p> <p>10 day, wasn't it?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. I need a minute, if I could.</p> <p>13 (There is a pause in the proceedings.)</p> <p>14 Q. And would you disagree with Commissioner Bodi's</p> <p>15 testimony that he never asked for details about</p> <p>16 the underlying facts of the case? He never looked</p> <p>17 at the search warrants. He never looked at the</p> <p>18 photographs of this.</p> <p>19 A. Would I disagree that he asked for that?</p> <p>20 Q. Do you disagree with his testimony that he never</p> <p>21 looked at any of those things?</p> <p>22 A. I think I already said that in my interview when I</p> <p>23 said that he didn't ask in this case. He reminded</p>
<p style="text-align: right;">385</p> <p>1 me of that. But his nature, I know him to be very</p> <p>2 punctilious, so I assume that he would have asked,</p> <p>3 but I don't recall him asking. So it wouldn't</p> <p>4 surprise me if he did, but I was surprised that he</p> <p>5 didn't ask me that. But if he testified that he</p> <p>6 didn't see anything like that, I think I already</p> <p>7 testified earlier that he didn't see anything like</p> <p>8 that.</p> <p>9 Q. So you don't disagree that he never looked at any</p> <p>10 of the documents relating to this?</p> <p>11 A. I have no reason to disagree with that. I just</p> <p>12 don't know.</p> <p>13 MS. RICE: Thank you. I have nothing</p> <p>14 further. I expect that Attorney McLaughlin will.</p> <p>15 GOVERNOR LYNCH: Thank you very much.</p> <p>16 Attorney McLaughlin.</p> <p>17 MR. MCLAUGHLIN: Thank you, Governor.</p> <p>18 COUNCILOR PIGNATELLI: Can we take a</p> <p>19 break?</p> <p>20 GOVERNOR LYNCH: Okay. The Senator</p> <p>21 requests to take a quick break if you don't mind.</p> <p>22 MR. MCLAUGHLIN: Certainly.</p> <p>23 (The proceedings are recessed at</p>	<p style="text-align: right;">386</p> <p>1 10:59 a.m.)</p> <p>2 (The proceedings reconvene on the record</p> <p>3 at 11:02 a.m.)</p> <p>4 GOVERNOR LYNCH: Okay. Why don't we</p> <p>5 resume, please.</p> <p>6 MR. MCLAUGHLIN: My client isn't here.</p> <p>7 Can we wait, please?</p> <p>8 GOVERNOR LYNCH: Oh, okay.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. MCLAUGHLIN:</p> <p>11 Q. Good morning.</p> <p>12 A. Good morning.</p> <p>13 Q. Chief, in the first instance I would like to give</p> <p>14 you a couple of documents that I expect to make</p> <p>15 reference to.</p> <p>16 A. Sure.</p> <p>17 Q. One would be your deposition, and the second would</p> <p>18 be the statement which you gave to the Attorney</p> <p>19 General's Office on January 25th, 2010.</p> <p>20 MR. MCLAUGHLIN: For purposes of the</p> <p>21 record, I've marked Chief Edwards' statement to</p> <p>22 the AG's Office as Respondent's Exhibit Q for ID,</p> <p>23 and I have marked Chief Edwards' deposition given</p>

<p style="text-align: right;">387</p> <p>1 on August 30th, 2010 as Respondent's W for ID. 2 May I approach? 3 GOVERNOR LYNCH: Um-hum. Yes. 4 (Attorney McLaughlin places Respondent's 5 Exhibit Q for ID and Respondent's Exhibit W for ID 6 before the witness.) 7 BY MR. MCLAUGHLIN: 8 Q. Undoubtedly there will be occasions for me to ask 9 you questions that relate in some way to one or 10 the other of the documents. 11 A. Yes, sir. 12 Q. When I do my intention is to refer you to a page 13 or pages and then give you whatever adequate time 14 you need to satisfy yourself that you're familiar 15 with it, and then I'll ask you a question. If I 16 misjudge and I'm asking a question too quickly, 17 you just tell me. 18 A. Yes, sir. 19 Q. Chief, in the course of your direct testimony you 20 made two statements. I want to repeat them to you 21 exactly as I can, and I think I got them 22 accurately, and then ask you what you meant by 23 it. One was, "Your office is doing the same</p>	<p style="text-align: right;">388</p> <p>1 thing." And the other was, "What Bodi asked to be 2 done, your office does every day." Were those 3 statements related in any way? 4 A. This issue of returning evidence or equipment -- 5 Q. Right. 6 A. -- this controlling statute says that with a 7 search warrant or officers come across evidence in 8 any other way, they retain that, produce it or 9 have it as evidence. What the Attorney General's 10 Office does daily, like every other police 11 department in the state, is return things that 12 have no evidentiary value. It wasn't until 13 recently because of this instance, this case, that 14 they decided to change their policy internally. 15 Q. What change are you referring to? 16 A. Not to return things without a Court Order. So, 17 for instance, if you follow the argument or agree 18 with the argument that the Attorney General's 19 Office made, then if you stop a car for DWI and 20 you seize that vehicle, you need a Court Order to 21 return the vehicle. That never happened. But 22 under the law, a strict reading that they want to 23 apply in this case, it would be necessary. That</p>
<p style="text-align: right;">389</p> <p>1 is not how the law works. That is not how the law 2 is administered. Things that have no evidentiary 3 value are returned. Their office does it. Our 4 office does it, and numerous other offices do it. 5 However, in most instances we try to obtain a 6 Petition in those cases that we think are 7 sensitive, and we -- we return equipment. That's 8 what I meant by that. 9 Q. Got it. Okay. Jumping ahead, have you ever had 10 occasion to go to a judge with a request to return 11 the equipment where a judge would deny that 12 request? 13 A. No. 14 Q. It's considered routine? 15 A. Yes. 16 Q. Thank you. Next question, Chief, relates to 17 testimony that was elicited by Attorney General 18 Cusack from Mr. Bodi this morning on his direct 19 examination that involved in Commissioner Bodi's 20 responses some statements about your involvement 21 in something. I'm going to frame it for you and 22 then ask. It had to do with something about what 23 I would call a DWI van.</p>	<p style="text-align: right;">390</p> <p>1 A. Yes. 2 Q. If I use the phrase DWI van, does that connect 3 with you in some way? 4 A. Yes. 5 Q. Okay. And the question I have for you, if I 6 followed the line of questioning, my question then 7 is did the Enforcement Division have an issue with 8 the Attorney General's Office regarding the 9 procurement of the DWI vehicle or van? 10 A. I want to be clear when I say this. We don't have 11 a problem with the Attorney General's Office. We 12 have a problem with leadership at the Attorney 13 General's Office. 14 Q. Did you have a problem with leadership at the 15 Attorney General's Office with respect to a DWI 16 van? 17 A. Yes. 18 Q. I want to stop for a second and just ask you. 19 What is the DWI van? 20 A. It's a command mobile unit used to process 21 offenders who have been violating the law, maybe 22 driving intoxicated. It's also a place that we 23 utilize for educational purposes, and it also has</p>

<p style="text-align: right;">391</p> <p>1 utility for national disasters that occur in the</p> <p>2 state that local police officers can utilize the</p> <p>3 van. The van is really for local police</p> <p>4 departments that we admin -- that we oversee.</p> <p>5 Q. Did you at any time have occasion to ask the</p> <p>6 Attorney General's Office to review specifically</p> <p>7 what administrative process was used to determine</p> <p>8 if your agency had done anything wrong with the</p> <p>9 acquisition of this van?</p> <p>10 A. Oh, there -- there was a lot of discussion -- um</p> <p>11 -- about the van, the purchase of the van, which</p> <p>12 we followed the guide -- the proper proceedings to</p> <p>13 obtain the funds to purchase the van. We followed</p> <p>14 the guidelines laid out to us by the</p> <p>15 administrative office, and at one point the</p> <p>16 Chairman had a conflict with the Commissioner of</p> <p>17 Administration. Then the van became an issue. It</p> <p>18 became an issue internally.</p> <p>19 The Attorney General's Office represented by</p> <p>20 Bud Fitch -- um -- interjected, wanted to oversee</p> <p>21 it. I met with Attorney Bud Fitch, Mike Brown</p> <p>22 from the AG's Office, Chairman Mark Bodi, Peter</p> <p>23 Heed from the Governor's Highway and Safety</p>	<p style="text-align: right;">392</p> <p>1 Agency, Jeff Garvin, his assistant. We all met at</p> <p>2 the Attorney General's Office to discuss the</p> <p>3 proper procedures for the purchase of the van, and</p> <p>4 the Commissioner of the Administration refused to</p> <p>5 sign off on the purchase of the van. Members of</p> <p>6 her organization had signed off. The Director of</p> <p>7 Purchasing, the supervisor -- business supervisor</p> <p>8 for the Liquor Commission signed off on it, and</p> <p>9 the project manager for her office all signed off</p> <p>10 on the vehicle.</p> <p>11 In an earlier meeting -- if I may back up a</p> <p>12 moment. In an earlier meeting that I had with the</p> <p>13 Commissioner of Administration along with Chairman</p> <p>14 Mark Bodi in her office, she admitted she didn't</p> <p>15 care how many people in her office signed off on</p> <p>16 it, she did not sign off on it and that the</p> <p>17 procedures were not followed. Members of her</p> <p>18 office were confused by it. So that's why we</p> <p>19 ended up at the Attorney General's Office.</p> <p>20 At the Attorney General's Office, they said</p> <p>21 there's no other way to move forward unless you go</p> <p>22 back before Governor and Council to have the</p> <p>23 Governor and Council approve the purchase of the</p>
<p style="text-align: right;">393</p> <p>1 van. I said during the meeting that there's a law</p> <p>2 that requires her to sign off. She can't</p> <p>3 unreasonably withhold her signature if federal</p> <p>4 funds are at stake.</p> <p>5 I showed this law to Representative -- um --</p> <p>6 Attorney Bud Fitch, who's unfamiliar with the</p> <p>7 law. Attorney Mike Brown was unfamiliar with the</p> <p>8 law. And they became upset. I know they became</p> <p>9 upset because this was communicated to me by</p> <p>10 Commissioner Russell, who came to me and said</p> <p>11 that, "Attorney General Bud Fitch wants your head</p> <p>12 on a platter. You tried to embarrass him by</p> <p>13 throwing the law in his face today," which it's</p> <p>14 not true. I was just simply pointing out the law</p> <p>15 that requires her to sign off on it.</p> <p>16 And I also pointed out to the Attorney</p> <p>17 General's Office that her office had -- based off</p> <p>18 of the documents that we received from her office,</p> <p>19 had falsified or misled the Governor and Council</p> <p>20 on the purchase of that vehicle because she</p> <p>21 claimed that her office never signed off on the</p> <p>22 vehicle, and that clearly had their signatures on</p> <p>23 the vehicle signing off for it, and this was very</p>	<p style="text-align: right;">394</p> <p>1 disturbing. So I made a complaint about it.</p> <p>2 Q. To whom?</p> <p>3 A. I made that complaint to -- um -- Attorney General</p> <p>4 Bud Fitch. I actually showed him the documents.</p> <p>5 And most of this -- Chairman Mark Bodi, to me, is</p> <p>6 kind of caught in the middle.</p> <p>7 Q. Well, let me ask you a question. Based upon your</p> <p>8 recollection of events at the time, and if I</p> <p>9 understand the thrust of the Attorney General's</p> <p>10 questions this morning, did Commissioner Bodi</p> <p>11 express any concern to you about the possibility</p> <p>12 that your agency may have not followed proper</p> <p>13 procedures? Was he concerned about that?</p> <p>14 A. Yeah. The -- the Chairman -- um -- I think was</p> <p>15 always concerned about that because I think if</p> <p>16 you're someone in his position where you</p> <p>17 constantly receive information, not from a large</p> <p>18 source of individuals but from key individuals who</p> <p>19 tell you your office is doing things wrong, you</p> <p>20 want to make sure that they're not.</p> <p>21 Q. The phrase of "cut corners," I think, comes back</p> <p>22 to me. I believe that he was challenged and</p> <p>23 suggested that somehow or other he -- he, Bodi,</p>

<p style="text-align: right;">395</p> <p>1 cut corners with respect to this van. I think</p> <p>2 that was the way it was presented.</p> <p>3 A. Sure.</p> <p>4 Q. Did he do anything in your observation to cut any</p> <p>5 corners with respect to this application for a</p> <p>6 van?</p> <p>7 A. No. No. And I think we followed the law that was</p> <p>8 laid out for us. This became a very personal</p> <p>9 issue -- um -- that morphed into something else.</p> <p>10 We went before a fiscal committee to obtain the</p> <p>11 funds. We went before Governor and Council to</p> <p>12 obtain approval to purchase the van. We followed</p> <p>13 every guideline we were given. This became a --</p> <p>14 the Commissioner of Administration was upset with</p> <p>15 the Chairman, and then the van became an issue.</p> <p>16 Q. Thank you. If you look at me for a moment. I</p> <p>17 made the same remark yesterday to a witness.</p> <p>18 Since I come along second to examine you, but</p> <p>19 where I would have called you in my own case,</p> <p>20 there are things that you've testified to that I</p> <p>21 will be making note of and trying to move</p> <p>22 through. There are other things I'll stop on. So</p> <p>23 I'm telling you directly it may be somewhat choppy</p>	<p style="text-align: right;">396</p> <p>1 from your perspective.</p> <p>2 A. Okay.</p> <p>3 Q. But I'm trying to take into account what you may</p> <p>4 have already testified to, okay?</p> <p>5 A. Sure.</p> <p>6 Q. I will also try to give you signals if I'm</p> <p>7 changing course.</p> <p>8 A. Sure.</p> <p>9 Q. And I'm going to change course. I'm going to drop</p> <p>10 back, and I'm going to ask you just some</p> <p>11 preliminary questions so that there's a decent</p> <p>12 record of who you are and what you're about.</p> <p>13 A. Okay.</p> <p>14 Q. You are currently the Chief of Enforcement at the</p> <p>15 Liquor Division?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Commission.</p> <p>18 A. Director, yes.</p> <p>19 Q. How long have you been an employee of the Liquor</p> <p>20 Commission?</p> <p>21 A. Nearly 16 years.</p> <p>22 Q. Are you a sworn officer?</p> <p>23 A. Yes, sir.</p>
<p style="text-align: right;">397</p> <p>1 Q. Did you go to the Police Academy?</p> <p>2 A. Yes, sir, I graduated from the 108th Police</p> <p>3 Academy.</p> <p>4 Q. What year was that, sir?</p> <p>5 A. I -- '95. '95.</p> <p>6 Q. '95. What was the first police agency you went to</p> <p>7 work for after graduating?</p> <p>8 A. New Hampshire State Liquor Commission.</p> <p>9 Q. So do I gather you were an inspector at the</p> <p>10 Commission before you became an administrator of</p> <p>11 the Commission?</p> <p>12 A. Yes.</p> <p>13 Q. You worked your way up through the ranks?</p> <p>14 A. Yes, sir.</p> <p>15 Q. How long have you been Chief?</p> <p>16 A. Nearly six years. Probably five and a half</p> <p>17 years.</p> <p>18 Q. How many people work for you as sworn enforcement</p> <p>19 officers?</p> <p>20 A. We have 26 positions.</p> <p>21 Q. Who is the person next below you in the chain of</p> <p>22 command?</p> <p>23 A. Deputy Chief Scott Dunn.</p>	<p style="text-align: right;">398</p> <p>1 Q. And the person next below him?</p> <p>2 A. Major Todd Feyrer.</p> <p>3 Q. And the person next below him?</p> <p>4 A. Two lieutenants. Lieutenant Smith, Lieutenant</p> <p>5 Wilson.</p> <p>6 Q. And then there are sergeants?</p> <p>7 A. And then investigators.</p> <p>8 Q. The young man who appeared here yesterday -- he's</p> <p>9 young to me.</p> <p>10 A. Fussell.</p> <p>11 Q. Fossell or Fussell?</p> <p>12 A. Fussell.</p> <p>13 Q. A sergeant?</p> <p>14 A. Yes, sir.</p> <p>15 Q. One of the individuals involved in Keene --</p> <p>16 A. Yes, sir.</p> <p>17 Q. -- along with, I believe, a Mr. Elliott?</p> <p>18 A. Sergeant Matt Elliott, yes.</p> <p>19 Q. Sergeant Elliott. Those were your two principal</p> <p>20 on-scene investigators --</p> <p>21 A. Yes, sir.</p> <p>22 Q. -- is that correct? What, as you understand it,</p> <p>23 are the principal duties of your Enforcement</p>

<p style="text-align: right;">399</p> <p>1 Division?</p> <p>2 A. The primary responsibility of the Enforcement</p> <p>3 Division, and it's also in support of the entire</p> <p>4 Liquor Commission is to maintain proper controls</p> <p>5 of manufacturing, distribution and licensing of</p> <p>6 alcohol in this state, to optimize revenues on</p> <p>7 behalf of the citizens of the state.</p> <p>8 Q. Now, as there are individuals below you in the</p> <p>9 chain of command, who would be above you in the</p> <p>10 chain of command?</p> <p>11 A. Three Liquor Commissioners.</p> <p>12 Q. In December of 2006, how many Commissioners were</p> <p>13 actually sitting in office? Commissioner Bodi --</p> <p>14 A. Chairman Bodi and -- um --</p> <p>15 Q. Mr. Simard?</p> <p>16 A. Yes, Mr. Richard Simard.</p> <p>17 Q. Commissioner Russell had been there?</p> <p>18 A. I believe Commissioner Russell left, yeah.</p> <p>19 November, December.</p> <p>20 Q. She left before these events as best you</p> <p>21 recollect?</p> <p>22 A. Yes.</p> <p>23 Q. All right.</p>	<p style="text-align: right;">400</p> <p>1 A. I believe so, yes.</p> <p>2 Q. In your observation, did the management of</p> <p>3 performance of the agency change in any</p> <p>4 significant way when Mark Bodi became Chairman?</p> <p>5 A. I -- I think so significantly. When I -- um -- I</p> <p>6 went to the National FBI Academy in 2006, I</p> <p>7 believe. When I graduated I returned, and I began</p> <p>8 to implement different policies or procedures for</p> <p>9 our organization after receiving that training,</p> <p>10 and it wasn't really until Chairman Bodi took over</p> <p>11 as Chairman that a shift began to take place in</p> <p>12 terms of leadership and expectations and demands</p> <p>13 on senior staff.</p> <p>14 Q. For the better or worse?</p> <p>15 A. I think for better. And, as I said earlier, I</p> <p>16 think Commissioners who come to the Liquor</p> <p>17 Commission are at a disadvantage because many of</p> <p>18 them do not understand the alcohol industry, the</p> <p>19 administration of that policy, the regulatory</p> <p>20 oversight, the licensing, the marketing, so it's</p> <p>21 very difficult. But when they come in and they</p> <p>22 ask challenging questions and hold your feet to</p> <p>23 the fire and ask you to explain exactly what we</p>
<p style="text-align: right;">401</p> <p>1 do, that can be upsetting for senior staff members</p> <p>2 and the Commissioners who are long-term</p> <p>3 professional staff members.</p> <p>4 And I think the Chairman was the first</p> <p>5 Commissioner to pull us together in terms of --</p> <p>6 what I mean by that, we had a actual training</p> <p>7 exercise where a professional individual was</p> <p>8 brought in to assist us with our career</p> <p>9 development and our leadership skills. And that</p> <p>10 was important because for a long time the</p> <p>11 Commission, since I've been there, we haven't had</p> <p>12 that type of direction. You know, there was a lot</p> <p>13 of in-fighting with Commissioners. There was a</p> <p>14 lot of -- um -- it had a very negative effect on</p> <p>15 the staff.</p> <p>16 Chairman Bodi came in and tried to bring</p> <p>17 everyone together, but in addition to that he held</p> <p>18 everyone accountable, including myself. And when</p> <p>19 you -- when you're required to produce a work</p> <p>20 product that's less than acceptable to your</p> <p>21 supervisor, and he holds you accountable to it, it</p> <p>22 can be upsetting to you if you've been a longtime</p> <p>23 staff member.</p>	<p style="text-align: right;">402</p> <p>1 Q. Okay. I believe there was some reference during</p> <p>2 your direct testimony, sir, about certifications</p> <p>3 of the Liquor Commission. National enforcement</p> <p>4 certifications.</p> <p>5 A. Yes. Our policy and procedures right now are</p> <p>6 under review, what we're in the process of having</p> <p>7 those done so we can become nationally accredited,</p> <p>8 and once we have obtained that national</p> <p>9 accreditation we would be the only State law</p> <p>10 enforcement agency that has national</p> <p>11 accreditation. There are many number -- a number</p> <p>12 of local police departments that have that</p> <p>13 certification, but we would be the only State</p> <p>14 enforcement agency with that certification.</p> <p>15 And we struggled with trying to get this off</p> <p>16 the ground for a number of years. It wasn't until</p> <p>17 Chairman Mark Bodi came in that we actually had</p> <p>18 support to move forward. It's an expensive</p> <p>19 undertaking, but it's certainly national standards</p> <p>20 for operating a law enforcement agency, and he was</p> <p>21 very supportive of that.</p> <p>22 Q. Now, these standards that you're talking about,</p> <p>23 there would at some point when complete be an</p>

<p style="text-align: right;">403</p> <p>1 actual certification?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Certification of what, Chief?</p> <p>4 A. Um -- the standard of -- um -- in the law</p> <p>5 enforcement community that your agency is</p> <p>6 operating with national accredited policies. So</p> <p>7 these policies have been vetted by law enforcement</p> <p>8 leaders from all over the country, and this is a</p> <p>9 standard utilized throughout the nation.</p> <p>10 Q. And do I understand that you are in the process of</p> <p>11 obtaining that certification?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Do you expect to obtain it?</p> <p>14 A. Absolutely.</p> <p>15 Q. Have you a time frame for when you anticipate</p> <p>16 obtaining it?</p> <p>17 A. Well, hopefully -- hopefully we'll be completed</p> <p>18 within a year. This is a -- this process takes</p> <p>19 anywhere from two to three years for completion</p> <p>20 because of the number of policies. You have the</p> <p>21 right to a review process that you have to go</p> <p>22 through. In addition to that, while we have been</p> <p>23 waiting for that process, the Enforcement Division</p>	<p style="text-align: right;">404</p> <p>1 in 2007 was named the most enforcement -- the most</p> <p>2 effective law enforcement -- liquor law</p> <p>3 enforcement agency in the country. In 2009, we</p> <p>4 were honorable mention for the most effective law</p> <p>5 enforcement process at the federal level in terms</p> <p>6 of alcohol enforcement.</p> <p>7 Q. And do I understand that when you get that</p> <p>8 certification you will be the only liquor</p> <p>9 enforcement agency in the country who's -- at the</p> <p>10 state level that will have that?</p> <p>11 A. We will be the second liquor enforcement agency in</p> <p>12 the country to obtain it, I believe, but we will</p> <p>13 be the only State law enforcement office -- agency</p> <p>14 in New Hampshire to have it. There are local</p> <p>15 police departments that have that certification,</p> <p>16 but no other State law enforcement agency in this</p> <p>17 state has it.</p> <p>18 Q. All right. Do I understand you to say that</p> <p>19 Commissioner Bodi has been supportive of that</p> <p>20 effort?</p> <p>21 A. Yes.</p> <p>22 Q. Let me take you to the fall of 2009. A year ago.</p> <p>23 My question is with what kind of frequency would</p>
<p style="text-align: right;">405</p> <p>1 you typically meet with Chairman Bodi for whatever</p> <p>2 reasons about a year ago, in that time frame, fall</p> <p>3 of 2009? Was it irregular? Regular? Often?</p> <p>4 Not?</p> <p>5 A. We had regular meetings. Some would be in</p> <p>6 person. Some would be over the phone, but you</p> <p>7 would touch bases with the Commissioners at least</p> <p>8 once a day. Sometimes I would be -- some days it</p> <p>9 would be more than that.</p> <p>10 Q. Would any of these meetings with Commissioner Bodi</p> <p>11 or phone calls with him occur in the evening?</p> <p>12 A. Most of the time when I had an opportunity to</p> <p>13 speak to the Chairman face-to-face it would</p> <p>14 occur -- it would happen after hours at five, six,</p> <p>15 seven o'clock.</p> <p>16 Q. Fair to say he was an after-hours person?</p> <p>17 A. Yes.</p> <p>18 Q. He didn't go home at the strike of five.</p> <p>19 A. No. No. I'm usually at my office till 7:30,</p> <p>20 eight o'clock, and he was always there as well.</p> <p>21 Q. So, as you observed it, you didn't have any</p> <p>22 problem with the man's basic work ethic?</p> <p>23 A. I figured he didn't have a life like I didn't.</p>	<p style="text-align: right;">406</p> <p>1 (Laughter.)</p> <p>2 A. No.</p> <p>3 Q. Point taken. Chief, if you could explain, please,</p> <p>4 the difference that I suspect exists -- tell me if</p> <p>5 I'm wrong -- between the criminal enforcement</p> <p>6 authority of your enforcement group and the</p> <p>7 administrative enforcement authority.</p> <p>8 A. The difference?</p> <p>9 Q. Yes.</p> <p>10 A. Our primary responsibility is administration,</p> <p>11 administrative regulations, and so most of our</p> <p>12 efforts are around working with the alcohol</p> <p>13 industry from manufacturing, distribution and to</p> <p>14 the retail sales to make sure they're in</p> <p>15 compliance with laws and rules. Obviously because</p> <p>16 everyone benefits from that.</p> <p>17 The best example I can give of how we operate</p> <p>18 as a regulatory agency is one of a high school.</p> <p>19 We have a principal, who represent the</p> <p>20 Commissioners. We have teachers, who represent</p> <p>21 the liquor investigators, and we have students,</p> <p>22 who would represent licensees. So everyone in</p> <p>23 that system has the responsibility to comply. And</p>

<p style="text-align: right;">407</p> <p>1 if students, the licensees, do well, the State 2 does well, and so we have a motivation to make 3 sure that they're in compliance, and they have a 4 motivation to make sure they're in compliance. 5 That's our regulatory framework, and that's how we 6 proceed. 7 We don't necessarily like bringing criminal 8 charges, but they're brought in instances where 9 the liquor investigators are the only law 10 enforcement officers around or they're asked to 11 assist by local enforcement officers. Many of our 12 investigators have been attacked in 13 establishments. The law enforcement community in 14 New Hampshire is very small, so we rely on one 15 another for assistance often, so if we get 16 criminal cases, more than likely we try to have 17 those covered by the local law enforcement 18 agency. But there are times when we have to bring 19 our own criminal charges because we were the 20 initial officers on scene. 21 Q. Now, on December 17th, 2009, my understanding is 22 that a citation was issued against the Railroad 23 Tavern. Am I accurate in that?</p>	<p style="text-align: right;">408</p> <p>1 A. Yes. 2 Q. Now, that -- was that an administrative citation 3 or a criminal citation? 4 A. It was an administrative citation. 5 Q. In the course of a standard year, call it 2009, 6 can you give the Governor and Council some idea of 7 about how many administrative citations you 8 issued? 9 A. Um -- I -- I can tell you -- it's easier if I do 10 it by charge. 11 Q. That's fine. 12 A. This was a charge of overservice, 179:5, so I 13 think in the preceding year, like 2009, 2008, we 14 had 51 cases of overservice for 10 counties. 15 Q. Okay. All right. And are there other categories 16 where you bring what I would call administrative 17 citations? 18 A. Service to a minor. 19 Q. How many of those in the course of a year? 20 A. Those are a little more significant in the fact 21 that we normally do compliance checks, and so you 22 find -- uh -- store clerks or a waitress made 23 mistakes, not properly checking ID or not paying</p>
<p style="text-align: right;">409</p> <p>1 attention at the time, and so that takes place, 2 but that's an administrative charge. Those are 3 the charges that require -- those are the only 4 charges you can lose your liquor license for or 5 face any significant penalty, service to a minor 6 or service to intoxication. Everything else is 7 covered in administrative rules, and the fines are 8 already set. The Commissioner can't adjust those 9 fines unless there's an actual hearing. 10 Most cases of 178, which is the licensing 11 code, are 100-dollar fine. Most cases in 179, 12 which is the criminal enforcement code, are \$250. 13 The only significance of your cases are service to 14 minors and service to intoxicated individuals. 15 Q. Okay, sir. I'm going to then restate and 16 understand that with respect to that classic case 17 that's similar to the Railroad Tavern, there were 18 about 50 of them in 2009? 19 A. Yeah. 20 Q. How many of those cases reached the hearing stage 21 where there was a formal hearing? 22 A. That's really difficult to say. The vast majority 23 of our cases are settled by settlement agreement.</p>	<p style="text-align: right;">410</p> <p>1 That's between our division and the licensee and 2 an attorney. 3 Q. All right. But while it may be difficult to say, 4 I'd like you to give me your best estimate. Of 5 the 50, would one reach the hearing stage? Five? 6 A. I'd say less than five. 7 Q. Okay. So of the 50, maybe 45 would be resolved by 8 agreement? 9 A. Yes. 10 Q. Was the Railroad Tavern case resolved by 11 agreement? 12 A. Yes. 13 Q. Was it resolved by an agreement acceptable to you? 14 A. Yes. The settlement agreements are between the 15 Enforcement Division and the licensee, and we 16 submit that to the Commission for approval. Now, 17 the Commission can reject that settlement 18 agreement, and they've done that at times when the 19 settlement agreement is not acceptable to the 20 Commissioners where they think a licensee is 21 treated too harshly in a case or where they think 22 the licensee has been treated too leniently. 23 Q. So it would be fair to say that the fact that the</p>

<p style="text-align: right;">411</p> <p>1 Railroad Tavern case ended with a settlement</p> <p>2 agreement would be the way that essentially 45 out</p> <p>3 of 50 cases in 2009 would have ended.</p> <p>4 A. Right.</p> <p>5 Q. Do you have any generalized idea of how many</p> <p>6 cases, administrative cases, would have been</p> <p>7 accompanied in 2009 by a search warrant?</p> <p>8 A. Um -- no, I -- not without looking that up. No,</p> <p>9 I -- I would guess that any case that we</p> <p>10 investigated where there was serious bodily injury</p> <p>11 or a fatality we would obtain a search warrant</p> <p>12 because those cases are very sensitive obviously</p> <p>13 and very tragic, so we would obtain a search</p> <p>14 warrant to make sure we protect the documentation,</p> <p>15 that we protect the interest of the licensee as</p> <p>16 well as the general public.</p> <p>17 Q. I'm going to signal you now, as I told you I</p> <p>18 would, that I'm changing direction again. I want</p> <p>19 to step back, and I just want your best memory. I</p> <p>20 realize it may not be accurate. If it isn't, just</p> <p>21 tell me. Going back through the course of your</p> <p>22 career -- that's not accurate. During the time</p> <p>23 that you have been Chair -- Chief, about how many</p>	<p style="text-align: right;">412</p> <p>1 times do you believe that your Enforcement</p> <p>2 Division has for one reason or another executed a</p> <p>3 search warrant? And if it be would be helpful,</p> <p>4 Chief, more than 100?</p> <p>5 A. Absolutely. Obtaining a search warrant in terms</p> <p>6 of the performance of our duties, it's not</p> <p>7 unusual. It's part of what we do.</p> <p>8 Q. All right. In your experience, going back to the</p> <p>9 entirety of your tenure, tell us how many times a</p> <p>10 State Representative has shown up in the middle of</p> <p>11 a search warrant and taken the names of the</p> <p>12 officers executing the search warrant.</p> <p>13 A. That's never happened.</p> <p>14 Q. Say again.</p> <p>15 A. That's never happened up until recently.</p> <p>16 Q. Has it happened anytime except for December 14th,</p> <p>17 2009?</p> <p>18 A. No. That's not to say that we don't have elected</p> <p>19 officials contact us asking us questions, and they</p> <p>20 do it in a very professional way, but it's never</p> <p>21 threatening. It's never with threats. It's -- um</p> <p>22 -- just follow-up, but we've never had anyone</p> <p>23 appear at a scene and actually make up things and</p>
<p style="text-align: right;">413</p> <p>1 falsify records -- or I mean statements, I should</p> <p>2 say. Sorry.</p> <p>3 Q. I will offer to you that Mr. Eaton was here</p> <p>4 yesterday. He testified. And I will offer to you</p> <p>5 that I think it's a fair characterization of his</p> <p>6 testimony to say that when the questions were put</p> <p>7 to him, he said I did nothing that would suggest</p> <p>8 interference. I did nothing that could be</p> <p>9 construed as intimidating. Nothing. Based upon</p> <p>10 your familiarity with your review of your</p> <p>11 officers' performance in this case, did you form a</p> <p>12 conclusion that the man was there just for benign</p> <p>13 reasons?</p> <p>14 A. The vast majority of legislators in this state --</p> <p>15 there's 424 of them, as you all know, and the vast</p> <p>16 majority of them are very ethical, honorable men</p> <p>17 and women. In my opinion, Dan Eaton does not</p> <p>18 represent that honor and dignity of State</p> <p>19 leadership.</p> <p>20 Q. You don't think he was there for benign reasons?</p> <p>21 A. Absolutely not.</p> <p>22 Q. You think he was there to intimidate?</p> <p>23 A. Absolutely.</p>	<p style="text-align: right;">414</p> <p>1 Q. To coerce?</p> <p>2 A. That's what his purpose is the entire time. Not</p> <p>3 one thing Dan Eaton has said about our division or</p> <p>4 about our agency has been proven. Not one thing.</p> <p>5 Q. Have you heard it said that Dan Eaton has said</p> <p>6 that if Mark Bodi would get rid of you, Mark</p> <p>7 Bodi's problems would go away?</p> <p>8 A. That was at the end of this -- um -- we had a</p> <p>9 study -- a study commission last summer to study</p> <p>10 whether the Enforcement Division should be</p> <p>11 transferred to State Police or not, and at the end</p> <p>12 of that -- I think it was day two or day three. I</p> <p>13 mean the second time -- the third -- second or</p> <p>14 third meeting. The Chairman approached Dan Eaton</p> <p>15 in the hallway in this building here, the</p> <p>16 Legislative Office Building. They had a</p> <p>17 conversation, and at the end of that the Chairman</p> <p>18 said to me that, "Dan Eaton said if I fire you, if</p> <p>19 I get rid of you, this all goes away." And that</p> <p>20 was Dan Eaton's -- in my opinion, based off of</p> <p>21 everyone who I spoke to, they said -- they would</p> <p>22 ask me what's the problem between you and Dan</p> <p>23 Eaton?</p>

<p style="text-align: right;">415</p> <p>1 In fact, when I interviewed with Attorney Jane 2 Young and Detective Dick Tracy they asked what is 3 this problem between you and Dan Eaton, which I'm 4 unfamiliar with the problem that Dan Eaton has 5 with me. I was told it was something I did in 6 Keene 10 years ago, which is surprising to me. I 7 had no idea who Dan Eaton really was up until the 8 point that he made allegations about me. Um -- so 9 I am unfamiliar with why he would want me removed, 10 but I know this last legislative process it was 11 Dan that said let's transfer them to Safety, and 12 then when we transfer them to Safety, when he's 13 gone, Eddie's gone, you can transfer him back to 14 the Liquor Commission. 15 Q. I'm just going to step back a bit, and I'm going 16 to ask you have you any clue whatsoever what 17 Eaton's issues are with you? 18 A. Again, it was things that happened -- allegedly 19 happened -- allegedly happened 10 years ago in 20 Keene. I'm unfamiliar with what that is. 21 Q. You are familiar? 22 A. I'm not familiar with what I've done to Dan Eaton 23 10 years ago in Keene. I have no idea.</p>	<p style="text-align: right;">416</p> <p>1 Q. All right. You've never otherwise crossed the 2 man? 3 A. As I just said, I found out who Dan Eaton really 4 was over the last two years. Prior to that I had 5 no idea who he really was. 6 Q. I am -- I think we all are now -- mindful of the 7 fact that there was a legislative initiative in 8 some phase proposing to transfer Enforcement from 9 Liquor to Safety. Do you agree? 10 A. Yes. 11 Q. Is it your understanding that the person 12 principally responsible for that initiative was 13 Representative Eaton? 14 A. Correct. 15 Q. What position did Commissioner Bodi take with 16 respect to that proposed transfer? 17 A. Commissioner Bodi held the same position that the 18 entire alcohol industry in the State held, that 19 the National Chiefs of Police Association held, 20 that advocacy groups like MADD, New Futures held, 21 that the entire Senate held, that the local 22 regulate -- revenue committee held, that the 23 majority of the House held, that it was a bad</p>
<p style="text-align: right;">417</p> <p>1 legislation. And I believe my conversations with 2 members of the Governor's staff, the Governor's 3 Office, also held the same belief that the 4 Chairman said, that it was not appropriate 5 legislation. 6 Q. With respect to the Governor's staff and office, 7 my understanding is that the position they took is 8 that they would consider the matter after a review 9 basically of the data. Is that a fair statement? 10 A. Correct. 11 Q. Okay. But other than that they didn't politically 12 support it one way or the other. 13 A. Correct. 14 Q. Okay. I will represent to you, I believe 15 accurately, that Representative Eaton testified 16 yesterday sitting where you're sitting in response 17 to some questions I was asking him. And I think 18 it's fair to say that he correctly interpreted my 19 question this way. I was saying to him did he 20 exert some unusual influence, and I think the 21 thrust of his answer was that he was one of 25 22 members, and there was no particular influence 23 that he could exert. Has it been your experience</p>	<p style="text-align: right;">418</p> <p>1 that Representative Eaton is unable to exert any 2 particular influence because he is merely one of 3 25? 4 A. No, I -- I -- again, if you look at the earlier 5 question, his legislation, no one supported it. 6 No one. He only found support when it was in 7 committee. So I think the facts and circumstances 8 and the data speaks for itself. 9 Q. Well, I'll tell you that Commissioner Eaton -- not 10 Commissioner Eaton -- that Representative Eaton 11 was very dignified when he sat here yesterday. I 12 would say he was very responsive to questions. 13 I'm not saying how he responded but very 14 responsive. I'm saying that I think that there 15 was a bit of indignity when I suggested to him 16 that he was basically a wheeler-dealer. I think 17 he was very persuasive. My question to you is 18 apart from his demeanor was he telling me the 19 truth? 20 MS. RICE: Objection. This is clearly 21 inappropriate to ask one witness whether another 22 one is truthful. 23 MR. MCLAUGHLIN: I'll rephrase.</p>

<p style="text-align: right;">419</p> <p>1 BY MR. MCLAUGHLIN:</p> <p>2 Q. Based upon your experience, was he being</p> <p>3 accurate?</p> <p>4 A. As I said earlier, when I told the Chairman when</p> <p>5 he talked to me about -- or complained to me about</p> <p>6 the comments he received from Representative Dan</p> <p>7 Eaton, they're not true. Nothing Dan Eaton has</p> <p>8 said about our agency has been proven to be true</p> <p>9 by fact or data.</p> <p>10 Q. I want to alert you that I'm changing direction</p> <p>11 again. I'm now going to your statement, the one</p> <p>12 that you gave to the Attorney General's Office. I</p> <p>13 believe I've given it to you there, and I believe</p> <p>14 that your testimony begins, I believe, at page</p> <p>15 169. If you look at the Bates stamps, that would</p> <p>16 be down in the lower right-hand section of the</p> <p>17 page, Chief.</p> <p>18 A. Okay.</p> <p>19 Q. Okay?</p> <p>20 A. Have it.</p> <p>21 Q. Got it?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Do I understand that this statement</p>	<p style="text-align: right;">420</p> <p>1 was given to the AG's Office on January 25th of</p> <p>2 2010?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And do I understand that when the colloquy began</p> <p>5 that you're in a room with Detective Tracy and</p> <p>6 with Attorney General Young?</p> <p>7 A. Correct.</p> <p>8 Q. Any fourth person there, sir?</p> <p>9 A. No, sir.</p> <p>10 Q. And do I understand correctly that you</p> <p>11 specifically inquired whether or not it was a</p> <p>12 criminal investigation?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And do you recollect how they replied?</p> <p>15 A. I think they said something to the effect that it</p> <p>16 is a criminal investigation, and I may have asked</p> <p>17 who's the focus of the investigation or something</p> <p>18 along those lines, and I said no. I said it's a</p> <p>19 criminal investigation, so everyone is the focus</p> <p>20 of the investigation so you come to some sort of</p> <p>21 collu -- conclusion, and they say yes.</p> <p>22 Q. And you have a transcript of your interview there</p> <p>23 in front of you, correct?</p>
<p style="text-align: right;">421</p> <p>1 A. Yes.</p> <p>2 Q. And we assume then that it was recorded by them,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Did you record it independently of them?</p> <p>6 A. Yes.</p> <p>7 Q. Why?</p> <p>8 A. It's been my experience when I've dealt with</p> <p>9 certain members of the Attorney General's</p> <p>10 Office -- not Attorney Jane Young, and I explained</p> <p>11 that to her. I have no problem with Attorney Jane</p> <p>12 Young. I think she's very professional as well as</p> <p>13 Attorney General Ann Rice, but it's been my</p> <p>14 experience when I've dealt with the Attorney</p> <p>15 General's Office that oftentimes -- and I</p> <p>16 complained to the Commissioner about this, that we</p> <p>17 should get things in writing from their office</p> <p>18 because it's been my experience when they give you</p> <p>19 guidance or advice it often changes when something</p> <p>20 doesn't go well. They change it to say that you</p> <p>21 misunderstood us. It's not what we meant to say.</p> <p>22 You didn't process it correctly. So, in my</p> <p>23 estimation, I needed to record it myself.</p>	<p style="text-align: right;">422</p> <p>1 Q. To effectively protect your record?</p> <p>2 A. Absolutely.</p> <p>3 Q. If you would go to page 174, please, Chief.</p> <p>4 MS. RICE: Excuse me. Would you give me</p> <p>5 the number at the top?</p> <p>6 MR. MCLAUGHLIN: Excuse me?</p> <p>7 MS. RICE: Could you give me the number</p> <p>8 at the top?</p> <p>9 MR. MCLAUGHLIN: Sure. I'll give you</p> <p>10 both numbers. Six, Bate -- oh, I'm sorry. You</p> <p>11 don't have Bates stamps.</p> <p>12 MS. RICE: No.</p> <p>13 MR. MCLAUGHLIN: Six.</p> <p>14 BY MR. MCLAUGHLIN:</p> <p>15 Q. Chief, your copy has a Bates stamp, and it has a</p> <p>16 pagination up at the top, so I'm going to be</p> <p>17 giving two numbers. I'm going to give the</p> <p>18 pagination to the AG's Office. I'm going to give</p> <p>19 you the Bates stamp and the pagination, okay.</p> <p>20 A. All right.</p> <p>21 Q. You were asked toward the middle of the page by</p> <p>22 Attorney Young, were you not, "Tell us about --</p> <p>23 tell us about that specifically. What are the</p>

<p style="text-align: right;">423</p> <p>1 political ramifications or the political</p> <p>2 connections that you are aware of prior to that</p> <p>3 first warrant -- first search warrant being</p> <p>4 executed?" Please, if you would, accurately read</p> <p>5 to the Governor and Council your answer to that</p> <p>6 question.</p> <p>7 A. Where it says -- starts -- "The -- um?"</p> <p>8 Q. Now, if I may, you don't have to read every um.</p> <p>9 A. Okay.</p> <p>10 Q. I think it's the way we all speak. You can just</p> <p>11 read the substance.</p> <p>12 A. Okay. "The State Representative Dan Eaton along</p> <p>13 with, in my opinion, is based on -- off</p> <p>14 information I knew about. Representative Dan</p> <p>15 Eaton, Deputy Attorney General Bud Fitch, in my</p> <p>16 opinion, the Commissioner of Safety, Barthelmes,</p> <p>17 had worked out this plan to have this division</p> <p>18 transferred to State Police because of our</p> <p>19 enforcement activities. That they did not like</p> <p>20 the way we were enforcing the laws against</p> <p>21 licensees, not because people weren't very unhappy</p> <p>22 with the way we were carrying out our -- not</p> <p>23 because of the way people were very unhappy when</p>	<p style="text-align: right;">424</p> <p>1 we were carrying out this -- um -- certain</p> <p>2 establishments in Manchester and Nashua. That was</p> <p>3 fine. But the ones that had so-called political</p> <p>4 protection, they were unhappy about those cases.</p> <p>5 In fact, Commissioner Russell at one point asked</p> <p>6 me not to go to certain places because, you know,</p> <p>7 I ignored those, and those -- because those are</p> <p>8 unlawful commands."</p> <p>9 Q. Thank you. Before the issuance of that search</p> <p>10 warrant on December 14th, 2009, had you been given</p> <p>11 a heads up by former Commissioner Russell that Dan</p> <p>12 Eaton was opposed to you?</p> <p>13 A. Before the search warrant in 2009?</p> <p>14 Q. Yes, sir.</p> <p>15 A. Um --</p> <p>16 Q. I'll withdraw the question and ask if you would</p> <p>17 please look at page seven at the top. There is a</p> <p>18 reference to Commissioner Russell's retirement, I</p> <p>19 believe.</p> <p>20 A. Yes.</p> <p>21 Q. I believe in August of 2009, and I believe you</p> <p>22 were asked a question that called for a response</p> <p>23 in which you discussed a warning.</p>
<p style="text-align: right;">425</p> <p>1 A. Yes.</p> <p>2 Q. Read that, please.</p> <p>3 A. "Right" -- I guess it starts, "Right. August,</p> <p>4 2009. They -- they both were there." And I'm</p> <p>5 referring to they. I'm speaking of -- um --</p> <p>6 Representative Dan Eaton and Randy Filiault. I'm</p> <p>7 indicating they both were there at her retirement</p> <p>8 party. "And she told me when we had her last day</p> <p>9 here because her retirement party that was first,</p> <p>10 and she had her last day here in Concord. And she</p> <p>11 said that Randy Filiault and Dan Eaton approached</p> <p>12 her at the party. Dan Eaton made her aware this</p> <p>13 issue against -- again standing on the dance floor</p> <p>14 and having their arms folded and saying that they</p> <p>15 were going to take care of it."</p> <p>16 What I'm saying there is Dan Eaton informed</p> <p>17 her he was going to take care of everything.</p> <p>18 "Because I have an issue with -- because I had an</p> <p>19 issue with Commissioner Russell. I think he was</p> <p>20 trying to tell her that he was going to take care</p> <p>21 of it. At least that's what she said to me. He</p> <p>22 said he was going to take care of it. She says</p> <p>23 you have a real enemy now. That's what she said</p>	<p style="text-align: right;">426</p> <p>1 to me."</p> <p>2 Q. Commissioner Russell for some reason said you have</p> <p>3 real enemies now?</p> <p>4 A. Correct.</p> <p>5 Q. Meaning Dan Eaton?</p> <p>6 A. Correct.</p> <p>7 Q. So whatever issues there were between you and</p> <p>8 Eaton was just not a function of your</p> <p>9 imagination.</p> <p>10 A. No.</p> <p>11 Q. If you would please go to Bates stamp page 223.</p> <p>12 MR. MCLAUGHLIN: Counsel, page 27 in your</p> <p>13 sequence.</p> <p>14 BY MR. MCLAUGHLIN:</p> <p>15 Q. My question to you is had anyone else alerted you</p> <p>16 to the fact that you had a problem with Dan Eaton?</p> <p>17 A. Well, I know a number of people -- I want to make</p> <p>18 sure I'm on the right page.</p> <p>19 Q. Yes.</p> <p>20 A. 223?</p> <p>21 Q. 223, sir.</p> <p>22 A. Yep.</p> <p>23 Q. Up at the top. It begins, "But I mean you can't</p>

<p style="text-align: right;">427</p> <p>1 pinpoint any." I think you were being asked by</p> <p>2 Attorney Young if you could pinpoint any instances</p> <p>3 where you had been essentially alerted that there</p> <p>4 was a problem.</p> <p>5 A. Oh, yeah. A number of people told me that Dan</p> <p>6 Eaton had a problem with me. In fact, in one</p> <p>7 conversation someone said -- I think this is what</p> <p>8 you're referring to, isn't it?</p> <p>9 Q. Yes, it is.</p> <p>10 A. I received a call from a lobbyist actually who</p> <p>11 said to me, "Do you know Dan Eaton? How do you</p> <p>12 get along with Dan Eaton?" And I go, "I get along</p> <p>13 with Dan Eaton fine." And she said, "Well, he</p> <p>14 doesn't like you." And I said, "Well, I've never</p> <p>15 had a problem with him. I've been places with</p> <p>16 him. I don't understand what you're saying." And</p> <p>17 she goes, "Well, he doesn't like you." And I go,</p> <p>18 "I got along with Tom Eaton fine." And she goes,</p> <p>19 "I didn't say Tom Eaton. I said Dan Eaton." And</p> <p>20 I go, "I don't know Dan Eaton. I know Tom Eaton."</p> <p>21 And that's the kind of like -- that's what our</p> <p>22 conversation was.</p> <p>23 Q. Your answer about seven lines from the bottom of</p>	<p style="text-align: right;">428</p> <p>1 that first paragraph begins with the word, "He</p> <p>2 goes." Do you find that?</p> <p>3 A. On the same page?</p> <p>4 Q. Yes, sir.</p> <p>5 MR. MCLAUGHLIN: May I approach?</p> <p>6 GOVERNOR LYNCH: Sure. Absolutely.</p> <p>7 MR. MCLAUGHLIN: Thank you.</p> <p>8 (Attorney McLaughlin approaches the</p> <p>9 witness.)</p> <p>10 BY MR. MCLAUGHLIN:</p> <p>11 Q. "He goes."</p> <p>12 A. Yes.</p> <p>13 Q. There you go. Um -- tell us what he did when he</p> <p>14 went.</p> <p>15 A. Um --</p> <p>16 Q. You can read it.</p> <p>17 A. Oh. "He goes, 'He hates you.'"</p> <p>18 Q. Continue.</p> <p>19 A. "I go, 'What are you talking about?' They're</p> <p>20 like, 'You know, he dated this person. He wants</p> <p>21 to date this person you're -- you're talking to.</p> <p>22 And somebody told him he was upset because the</p> <p>23 person you're dating. That came out somewhere</p>
<p style="text-align: right;">429</p> <p>1 that he wanted -- he wanted to go out with this</p> <p>2 person."</p> <p>3 Q. You told this person that was speaking to you that</p> <p>4 you had no idea what Dan Eaton was talking about?</p> <p>5 A. Correct.</p> <p>6 Q. And you didn't.</p> <p>7 A. I had no idea what he was talking about. I'm not</p> <p>8 sure what woman would date the two of us.</p> <p>9 (Laughter.)</p> <p>10 Q. I'm sorry?</p> <p>11 A. I'm not sure what woman would date the two of us.</p> <p>12 (Laughter.)</p> <p>13 COUNCILOR WIECZOREK: At the same time</p> <p>14 frame.</p> <p>15 THE WITNESS: Well, that would be big</p> <p>16 interest.</p> <p>17 BY MR. MCLAUGHLIN:</p> <p>18 Q. Sometimes it's prudent for an attorney not to ask</p> <p>19 the next question. Chief, referring to Bates 181,</p> <p>20 page 13, at the very top there is a colloquy</p> <p>21 between you and the Attorney General's Office that</p> <p>22 includes a statement by you at the second line,</p> <p>23 "Right. That's why I didn't want to take the</p>	<p style="text-align: right;">430</p> <p>1 surveillance equipment."</p> <p>2 A. 181?</p> <p>3 Q. Yes. I'm seeing that I've broken my promise. I'm</p> <p>4 going to stop until you find it. Yeah, 181.</p> <p>5 A. Okay.</p> <p>6 Q. It's actually the second line beginning with the</p> <p>7 word, "Right."</p> <p>8 A. Um-hum.</p> <p>9 Q. And then it says, "That's why I didn't want to</p> <p>10 take the surveillance equipment." Look at me, if</p> <p>11 you would, Chief. I'm going to stop. Look at</p> <p>12 whatever you want before or after so you</p> <p>13 understand context, and then my question to you is</p> <p>14 what were you talking about? Okay. Take your</p> <p>15 time.</p> <p>16 (The witness reviews the document.)</p> <p>17 A. Okay.</p> <p>18 Q. What were you referring to, Chief?</p> <p>19 A. In that instance we were talking about why we</p> <p>20 don't take the equipment because we don't want to</p> <p>21 be disruptive to the licensee's operation.</p> <p>22 They -- many of these licensees have gone through</p> <p>23 enormous expense to put in surveillance equipment</p>

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1 to protect their interests from lawsuits or other
 2 allegations. So we try to be nonintrusive when we
 3 have to conduct our business, so we normally ask
 4 the licensee to simply download the information on
 5 a disk for us.
 6 Q. And that's what happened originally in this case,
 7 is it not?
 8 A. Correct.
 9 Q. And do I understand correctly that what you got as
 10 a result of your courtesy was nine minutes, and
 11 nine minutes was insufficient, correct?
 12 A. Correct.
 13 Q. So that's what precipitated the second search
 14 warrant?
 15 A. Correct.
 16 Q. And at that point they took the equipment for the
 17 purpose of downloading the video?
 18 A. Correct. But they went back a second time and
 19 informed the licensee that we only have nine
 20 minutes of footage. The search warrant is for
 21 three hours of footage. And they gave him a
 22 second opportunity, as I understand it, to
 23 download that video footage a second time. And

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1 to be gratuitous about it, there would be no
 2 reason not to get that equipment back to a bar
 3 owner, correct?
 4 A. Yeah. As I testified earlier, we would never just
 5 retain it. Now, in this case if the licensee had
 6 come to us and said I want my equipment back, we
 7 would have given it back to him when we were done.
 8 Q. Okay. Now, I want to stop for a second. I'll be
 9 right back.
 10 MR. MCLAUGHLIN: Governor, may I assume
 11 that you're probably going to stop at noontime or
 12 thereabouts?
 13 GOVERNOR LYNCH: I think really -- yes.
 14 If your questioning would continue a little bit
 15 longer, we can continue, but if it's going to go
 16 much longer than that, then we probably should
 17 stop around noontime.
 18 MR. MCLAUGHLIN: I believe it would be
 19 much longer.
 20 GOVERNOR LYNCH: Okay.
 21 MR. MCLAUGHLIN: So I can just -- with
 22 your permission, just wrap up.
 23 GOVERNOR LYNCH: That would be fine.

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1 when he did not do that, that's when they took the
 2 equipment.
 3 Q. Would it be fair to say, Chief, that while
 4 equipment is an issue here, that the goal of your
 5 enforcers is not to take the equipment per se but
 6 to take the video product of the equipment?
 7 A. The purpose was to obtain the video footage inside
 8 the equipment.
 9 Q. And if Mr. Filiault had been able to cooperate
 10 with them the first time, there would have been no
 11 reason for a second warrant. Fair to say?
 12 A. Correct.
 13 Q. And at the time of the second warrant if he could
 14 cooperate with them at that time, your people
 15 would have left with the work product but not the
 16 equipment, correct?
 17 A. Right.
 18 Q. And would it be fair to say that if equipment is
 19 taken, that you would understand that that
 20 equipment might for a variety of reasons be
 21 important to the bar owner, correct?
 22 A. Correct.
 23 Q. And it would be fair to say that unless you wanted

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1 MR. MCLAUGHLIN: Thank you, Governor
 2 Lynch.
 3 BY MR. MCLAUGHLIN:
 4 Q. I want to show you a document, and I want to
 5 invite your attention to a particular line. The
 6 document that I'm referring to would be a Motion
 7 of September 10th, 2010 filed by the Attorney
 8 General's Office entitled, "Motion to Exclude
 9 Testimony of Senator Hassan and Senator
 10 D'Allesandro." And I'm just going to wait a
 11 minute because I believe --
 12 MS. RICE: I want to object to this line
 13 of questioning. Could we approach?
 14 GOVERNOR LYNCH: Sure.
 15 (Counsel approach the Bench. A
 16 discussion is held off the record.)
 17 (The proceedings continue on the record.)
 18 BY MR. MCLAUGHLIN:
 19 Q. So, sir, look at me. Make an assumption that in a
 20 pleading the Attorney General's Office makes the
 21 following statement. Listen carefully. I'll
 22 repeat it if I need to. "The sole issue before
 23 the Governor and Council is whether a Liquor

<p style="text-align: right;">435</p> <p>1 Commissioner who injects himself into and directs</p> <p>2 an ongoing law enforcement investigation for</p> <p>3 political purposes should remain in a position</p> <p>4 with law enforcement oversight." Do you</p> <p>5 understand what I've just read?</p> <p>6 A. Yeah.</p> <p>7 Q. "Who injects himself into and directs an ongoing</p> <p>8 law enforcement investigation." Did Commissioner</p> <p>9 Bodi have anything to do with the initiation of an</p> <p>10 investigation at the Railroad Tavern?</p> <p>11 A. No.</p> <p>12 Q. Did he have anything to do with the decision to</p> <p>13 issue a search warrant at the Railroad Tavern?</p> <p>14 A. No.</p> <p>15 Q. Did he send anybody to the Railroad Tavern?</p> <p>16 A. No.</p> <p>17 Q. Did he send anybody back to the Railroad Tavern?</p> <p>18 A. No.</p> <p>19 Q. Did he tell anybody not to go to the Railroad</p> <p>20 Tavern?</p> <p>21 A. No.</p> <p>22 Q. Apart from telling you to return the equipment,</p> <p>23 did he have any other involvement in the ongoing</p>	<p style="text-align: right;">436</p> <p>1 law enforcement investigation?</p> <p>2 A. No.</p> <p>3 MR. MCLAUGHLIN: Governor, would it be</p> <p>4 acceptable? It's noontime. I would propose to</p> <p>5 suspend.</p> <p>6 GOVERNOR LYNCH: Okay. Thank you,</p> <p>7 Attorney McLaughlin. So let's suspend until one</p> <p>8 o'clock. Thank you.</p> <p>9 (The proceedings are recessed at</p> <p>10 12:00 p.m.)</p> <p>11 (The proceedings reconvene on the record</p> <p>12 at 1:06 p.m.)</p> <p>13 GOVERNOR LYNCH: I'm going to ask both</p> <p>14 counsel if you would approach the Bench just for a</p> <p>15 moment, please.</p> <p>16 (Counsel approach the Bench. A</p> <p>17 discussion is held off the record.)</p> <p>18 (The proceedings continue on the record.)</p> <p>19 GOVERNOR LYNCH: Thank you.</p> <p>20 MR. MCLAUGHLIN: Governor.</p> <p>21 BY MR. MCLAUGHLIN:</p> <p>22 Q. Chief, in your direct testimony, you responded to</p> <p>23 a question, and you used the phrase that the</p>
<p style="text-align: right;">437</p> <p>1 Chairman appeared to you to be "scared shitless,"</p> <p>2 I think was your phrase. Something I've heard in</p> <p>3 the Navy.</p> <p>4 A. Yes. I'm a Navy man.</p> <p>5 Q. There you go. When you said that, you were not</p> <p>6 referring to the fact that he was in any way</p> <p>7 behaving in a personally cowardly way, were you?</p> <p>8 A. No. I was referring to it as the pressure that he</p> <p>9 had felt panicked, like I said, from a political</p> <p>10 standpoint, not a -- not a personal</p> <p>11 characterization.</p> <p>12 Q. His concern for the agency and budget basically,</p> <p>13 correct?</p> <p>14 A. Right.</p> <p>15 Q. Okay, sir. Similarly, when you used the word</p> <p>16 "panicked," do you recollect at your deposition I</p> <p>17 asked you to be more expressive and tell me what</p> <p>18 you meant by that in particular? Do you recollect</p> <p>19 that?</p> <p>20 A. Yes, sir.</p> <p>21 MS. CUSACK: Page number?</p> <p>22 BY MR. MCLAUGHLIN:</p> <p>23 Q. And do you recollect that saying to me that what</p>	<p style="text-align: right;">438</p> <p>1 you meant was a person who behaved under a lot of</p> <p>2 stress and anxiety?</p> <p>3 A. I don't recall that specific statement, but if</p> <p>4 that's what is reflected in the deposition, that's</p> <p>5 certainly what I said.</p> <p>6 MR. MCLAUGHLIN: Deposition page 105.</p> <p>7 BY MR. MCLAUGHLIN:</p> <p>8 Q. Chief, I'm not questioning. I'm just referring.</p> <p>9 Check page 105 of your deposition.</p> <p>10 A. Okay.</p> <p>11 Q. Okay. I'm going down to line 14, 105. When I</p> <p>12 query you I say, "When you say panicked that</p> <p>13 conjures a certain image in my head about panic,</p> <p>14 which is running around uncontrollably, et cetera,</p> <p>15 et cetera. What do you mean by panic?" And you</p> <p>16 respond, do you not? "I don't mean like he was</p> <p>17 hysterical. I mean he was panicked. He was</p> <p>18 like -- like most people when they seem anxious."</p> <p>19 "Are you talking about a high level of anxiety</p> <p>20 about what's going on?" "Right. Like very</p> <p>21 concerned. I used the word panicked. That's what</p> <p>22 it seems to me, but he seemed panicked, like high</p> <p>23 level of anxiety, concern that there was going to</p>

<p style="text-align: right;">439</p> <p>1 be trouble, and he kept saying, 'There's going to 2 be trouble.'" That's what you meant by panicked? 3 A. Yes, sir. 4 Q. And he was right. There was going to be trouble, 5 right? 6 A. Yes, sir. 7 Q. Look at me for a second, Chief. For good reasons, 8 I'm going to pick up the pace of this because I 9 think that's an expectation, but if I pick up the 10 pace to a point where, in your view, it's unfair, 11 again, put up your hand, okay? 12 A. Yes, sir. 13 Q. Please go to page 194, Chief, of your statement to 14 the AG, which for the AG's purposes would be page 15 26, and go back to the page before that, which 16 would be page 25. Would you agree -- I'm going to 17 give you a second to look at it, Chief. And the 18 standing question is would you agree that you were 19 having a conversation in the Commissioner's office 20 about his insistence that equipment be returned? 21 A. Yeah. 22 Q. Now, I'd like you to go, please, to page 25, the 23 remark that you make when you were asked the</p>	<p style="text-align: right;">440</p> <p>1 question by Attorney Young, "Is that unusual for 2 you to go to see the Chairman in his office?" Do 3 you follow where I am? 4 A. Yes. 5 Q. And you say, "Oh, no. No. I mean all 6 Commissioners call me at one point and said -- 7 sometimes they say come see me. Get over here, 8 so," and then it says, "inaudible. That's not 9 abnormal." 10 A. Correct. 11 Q. "But what he said to me we've got to get that 12 equipment back. No, we can't. We can't." I 13 think that's you talking. 14 MS. RICE: I'm wondering if there's a 15 question here. 16 MR. MCLAUGHLIN: Yes. But what I'm doing 17 is asking if he remembers saying this. 18 BY MR. MCLAUGHLIN: 19 Q. "The best we can do is that when the guys are done 20 we can get it back to him. But they're still 21 recording it. They haven't gotten all the 22 evidence from it. And he and I, we must have been 23 there for about close to 45 minutes to an hour."</p>
<p style="text-align: right;">441</p> <p>1 A. Correct. 2 Q. So you were telling him that they were in the 3 process of downloading the evidence, but they 4 hadn't gotten it done yet, correct? 5 A. Yes. 6 Q. And he was saying to you, "Yeah, but we're going 7 to get it back today. We're going to get it back 8 today." Go over to the next page now. At that 9 point is it fair to say that when he said, "We're 10 going to get it back today," that you picked up 11 the phone, and you called the major? 12 A. Correct. 13 Q. And you were saying to the major do what you need 14 to do to get that evidence downloaded, correct? 15 A. Right. 16 Q. And it was fair to say that there was an issue of 17 overtime, correct? 18 A. Yes, the major related to me that it cost some 19 overtime. 20 Q. And you authorized that overtime, correct? 21 A. Right. 22 Q. So at one and the same time you were following the 23 Commissioner's instructions to get that equipment</p>	<p style="text-align: right;">442</p> <p>1 back, and at the same time you were removing the 2 evidence from it, correct? 3 A. Right. 4 Q. All right. Observe the rapidity with which I'm 5 going through these questions. Turning to your 6 deposition, sir. I'm at that portion of the 7 deposition around pages 86 to 94. I want to 8 invite your attention to a discussion that you had 9 with the major -- with the major. I'll wait till 10 you get to that approximate portion so you won't 11 have to flip. 12 A. Okay. 13 Q. Page 86 to 92. 14 A. I'm there. 15 Q. Okay. Was it your understanding on December 14th, 16 December 15th, 2009, that it was a specific 17 function of the Attorney General's Department -- 18 Attorney General's Office to assist other agencies 19 in the event of so-called public integrity 20 issues? Excuse me. 21 A. Yes, sir. 22 Q. And a public integrity issue would be the sort of 23 thing where political interference as you would</p>

<p style="text-align: right;">443</p> <p>1 consider illegal, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And that was what was prompted the instruction to</p> <p>4 the major call the AG's Office, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. When you instructed the major to call the AG's</p> <p>7 Office, you gave him a limiting instruction, and</p> <p>8 that was don't tell him it's Eaton?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Were you together with the major when you did</p> <p>11 that?</p> <p>12 A. Yes, he was in my office.</p> <p>13 Q. Did you hear him make the call?</p> <p>14 A. Yes, he called from his cell phone seated at a</p> <p>15 table inside my office.</p> <p>16 Q. Why did you give him the instruction don't tell</p> <p>17 him it's Eaton?</p> <p>18 A. Like I said earlier, it's been my experience that</p> <p>19 when Representative Dan Eaton is involved in</p> <p>20 something like this, what he -- as I understand</p> <p>21 it, that the Attorney General's Office has not</p> <p>22 been willing to assist in those type of political</p> <p>23 instances.</p>	<p style="text-align: right;">444</p> <p>1 Q. That was your opinion?</p> <p>2 A. Yeah. Yes.</p> <p>3 Q. And it rose to the level of giving the instruction</p> <p>4 to the major don't tell him it's Eaton.</p> <p>5 A. Yes.</p> <p>6 Q. But he tells him it's Eaton, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And then he hung up?</p> <p>9 A. No. Um -- he finished the conversation outside of</p> <p>10 my office because of the way I was looking at</p> <p>11 him. He felt uncomfortable.</p> <p>12 Q. Oh. If I'm catching on, you hear him say it's</p> <p>13 Eaton.</p> <p>14 A. Right.</p> <p>15 Q. He looks at you. You look at him. He thinks this</p> <p>16 guy is not happy with me.</p> <p>17 A. Yes.</p> <p>18 Q. Is that fair?</p> <p>19 A. Yeah.</p> <p>20 Q. He stands up and walks out?</p> <p>21 A. Yes.</p> <p>22 Q. And was he correct? You weren't happy with him?</p> <p>23 A. Yes. I told him that, too.</p>
<p style="text-align: right;">445</p> <p>1 Q. What did you tell him?</p> <p>2 A. That I asked you not to do it. I'm not sure why</p> <p>3 you did it, but -- and he said, "They asked me."</p> <p>4 And I go, "I told you not to do it."</p> <p>5 Q. All right. Did he have an answer at that time as</p> <p>6 to whether or not there would be an AG assigned to</p> <p>7 deal with this?</p> <p>8 A. He said -- I think -- I believe he told me that</p> <p>9 they would get back to him at some point.</p> <p>10 Q. Do you know if they did get back to him?</p> <p>11 A. I'm assuming they did because, as I said, he came</p> <p>12 in and told me that the instructions were to -- um</p> <p>13 -- contact the State Police and have them assist,</p> <p>14 but, as I stated earlier, the State Police doesn't</p> <p>15 have jurisdiction.</p> <p>16 Q. You weren't looking for State Police.</p> <p>17 A. No.</p> <p>18 Q. You weren't looking for Keene Police.</p> <p>19 A. Keene Police, yes.</p> <p>20 Q. But they were going to help you tactically.</p> <p>21 A. Yes, they help with -- part of our policy is that</p> <p>22 we contact the local police department to assist.</p> <p>23 Q. But you didn't need them for public integrity</p>	<p style="text-align: right;">446</p> <p>1 purposes.</p> <p>2 A. No.</p> <p>3 Q. You wanted a heavier hitter?</p> <p>4 A. Yeah, I thought the Attorney General's Office job</p> <p>5 was to be involved in those matters, and that's</p> <p>6 why we contacted them.</p> <p>7 Q. Okay. Please go to your deposition at page 95.</p> <p>8 Deposition, Chief, 95. Would you agree with me</p> <p>9 that the questions I was asking you at that time</p> <p>10 pertain to questions that Attorney General Young</p> <p>11 was asking you during the time of your interview?</p> <p>12 A. Yes.</p> <p>13 Q. And she asked you why you didn't call the AG's</p> <p>14 Office for help?</p> <p>15 A. Yes.</p> <p>16 Q. And you said, "I did," correct?</p> <p>17 A. Yes.</p> <p>18 Q. And then her response to that was what? Read it,</p> <p>19 please. Top of 96.</p> <p>20 A. Ninety-six.</p> <p>21 Q. Top. "I think." "And I think."</p> <p>22 A. "I think her reply -- her reply was don't you</p> <p>23 think it was a good thing that we didn't help at</p>

<p style="text-align: right;">447</p> <p>1 that time because we couldn't do the interviews or</p> <p>2 the investigation or something like that."</p> <p>3 Q. She was saying it was a good thing they didn't</p> <p>4 help.</p> <p>5 A. Well, yeah. She -- she --</p> <p>6 Q. Did that make any sense to you at all?</p> <p>7 A. No.</p> <p>8 Q. Thank you. Do I understand at the end of the day</p> <p>9 Commissioner Bodi expressed an opinion to you that</p> <p>10 he didn't like the idea of the fact that the union</p> <p>11 complaint was being made?</p> <p>12 A. Yeah, he didn't -- he didn't like that. And,</p> <p>13 again, I think this came from a concern that the</p> <p>14 Chairman has experienced in the Legislature</p> <p>15 himself. He's familiar with the process at a</p> <p>16 level that I'm not familiar with, and I think his</p> <p>17 experience around those issues caused a great deal</p> <p>18 of concern for him.</p> <p>19 Q. But at one point you indicated that the AG's</p> <p>20 Office wasn't going to get involved at that point</p> <p>21 and investigate. You told him that, correct?</p> <p>22 A. Yes, I told him that the Attorney General's</p> <p>23 Office -- the investigators will likely go to the</p>	<p style="text-align: right;">448</p> <p>1 Attorney General's Office, but at some point the</p> <p>2 union decided that it would be better if they went</p> <p>3 to the FBI or someone else other than the Attorney</p> <p>4 General's Office.</p> <p>5 Q. And he said good?</p> <p>6 A. Yes.</p> <p>7 Q. Thank you.</p> <p>8 MR. MCLAUGHLIN: I have no further</p> <p>9 questions.</p> <p>10 GOVERNOR LYNCH: Thank you very much,</p> <p>11 Attorney McLaughlin. Redirect, Attorney Rice.</p> <p>12 MS. RICE: Yes, thank you.</p> <p>13 REDIRECT EXAMINATION</p> <p>14 BY MS. RICE:</p> <p>15 Q. Chief Edwards, when Commissioner Bodi ordered you</p> <p>16 to return the evidence on the day the -- the 17th,</p> <p>17 did he ask you about the normal procedures for</p> <p>18 handling evidence or equipment that had been</p> <p>19 seized pursuant to search warrant?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Did he ask you your thoughts about returning it,</p> <p>22 whether it was a proper thing or not?</p> <p>23 A. No, ma'am.</p>
<p style="text-align: right;">449</p> <p>1 Q. And you're the chief law enforcement agent of</p> <p>2 the -- the Liquor Commission, right?</p> <p>3 A. Yeah.</p> <p>4 Q. So you would be the one, if anyone, who would have</p> <p>5 that information about whether it's appropriate to</p> <p>6 turn something back, correct?</p> <p>7 A. Correct.</p> <p>8 Q. But, in fact, he ordered the return of the</p> <p>9 evidence because he really wanted to get Eaton</p> <p>10 placated or off his back; isn't that true?</p> <p>11 A. I -- I think he felt that that would help calm</p> <p>12 Representative Eaton down.</p> <p>13 Q. Okay. And it's true that you -- you thought that</p> <p>14 Sergeant Fussell and Sergeant Elliott were a</p> <p>15 little too soft in their manner of executing that</p> <p>16 search warrant, didn't you?</p> <p>17 A. In dealing with Representative Dan Eaton I thought</p> <p>18 they were.</p> <p>19 Q. Also with Randy Filiault; isn't that correct?</p> <p>20 A. No, I -- I think what they did was -- in terms of</p> <p>21 executing the search warrant?</p> <p>22 Q. Yeah.</p> <p>23 A. I was a little concerned that we didn't review the</p>	<p style="text-align: right;">450</p> <p>1 entire footage. Um -- and I understand that</p> <p>2 they -- they felt they needed to move along a</p> <p>3 little quicker maybe than normal, but those are</p> <p>4 things you do anytime you have an incident. You</p> <p>5 review it, look what you could have done better,</p> <p>6 and we would do that every time we have a case.</p> <p>7 Q. You actually thought that they were pretty</p> <p>8 accommodating to Representative -- excuse me --</p> <p>9 Randy Filiault, didn't you?</p> <p>10 A. I thought they were extremely accommodating, and,</p> <p>11 as I said earlier, we try not to be disruptive to</p> <p>12 the licensee's operation.</p> <p>13 Q. And when you made your decision to go back for</p> <p>14 that second search warrant you didn't actually</p> <p>15 tell Commissioner Bodi that you were going back,</p> <p>16 correct?</p> <p>17 A. No.</p> <p>18 Q. You didn't. And you did that. You did not want</p> <p>19 to tell him about that because you didn't want to</p> <p>20 get into any kind of a conversation with him about</p> <p>21 so that he could order you not to go back; isn't</p> <p>22 that right?</p> <p>23 A. Right. I didn't want to get in a conversation</p>

<p style="text-align: right;">451</p> <p>1 about it.</p> <p>2 Q. You were scared that he would order you to not go</p> <p>3 back, and you didn't want to get into that</p> <p>4 position.</p> <p>5 A. I'm not sure if I was afraid that he was going to</p> <p>6 order me that, but I know in my mind I'm thinking</p> <p>7 I'm going forward with the search warrant. As I</p> <p>8 said earlier, as a normal routine I don't discuss</p> <p>9 search warrants with the Chairman or any</p> <p>10 Commissioner.</p> <p>11 Q. But you already discussed the search warrant with</p> <p>12 Commissioner Bodi, the first one.</p> <p>13 A. Yes.</p> <p>14 Q. And he obviously was concerned about it.</p> <p>15 A. He was concerned about it because he was given</p> <p>16 false information, yes.</p> <p>17 Q. He was concerned about what was happening. He was</p> <p>18 concerned about the situation.</p> <p>19 A. Right.</p> <p>20 Q. So you didn't go back to the Commissioner Bodi and</p> <p>21 tell him about that second one because you were</p> <p>22 concerned that he might order you not to go back.</p> <p>23 A. Well, I answered the question. I was concerned we</p>	<p style="text-align: right;">452</p> <p>1 were going to have a conversation about that, and</p> <p>2 that could be the result of it.</p> <p>3 Q. Okay. And what was your understanding of why the</p> <p>4 Commissioner ordered you to return that evidence?</p> <p>5 A. He ordered the equipment returned. Again, I just</p> <p>6 want to make sure I'm clear here on the record.</p> <p>7 He never ordered me to return the evidence. He</p> <p>8 ordered me to return the equipment.</p> <p>9 Q. Right.</p> <p>10 A. And, again, that was to, I think, address or</p> <p>11 appease Representative Dan Eaton.</p> <p>12 Q. And, in fact, you said that he's afraid of Dan</p> <p>13 Eaton, correct?</p> <p>14 A. In my opinion, I think -- I don't think -- I don't</p> <p>15 mean like a physical you'd be frightened of a</p> <p>16 dog. Maybe I'm the only one that's afraid of a</p> <p>17 dog. Not in that way but frightened in terms of</p> <p>18 political operating ability. I think I made that</p> <p>19 clear in my deposition and in my first statement</p> <p>20 to the Attorney General's Office.</p> <p>21 Q. Sure.</p> <p>22 A. That Commissioners have a motivation to have</p> <p>23 strong relationships with legislators,</p>
<p style="text-align: right;">453</p> <p>1 particularly with legislators on the Finance</p> <p>2 Committee where the Liquor Commission spends most</p> <p>3 of their time.</p> <p>4 Q. Does that mean -- can I stop you there?</p> <p>5 A. Sure.</p> <p>6 Q. Does that mean that every Commissioner needs to</p> <p>7 curry favor with every legislator that's on the</p> <p>8 Finance Committee?</p> <p>9 A. Of course not.</p> <p>10 Q. Thank you. When you issued the notice of</p> <p>11 administrative hearing, you issued that fairly</p> <p>12 quickly. You returned the evidence on Wednesday,</p> <p>13 the 17th, and on Thursday you issued that notice;</p> <p>14 is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And I think you testified earlier that you</p> <p>17 issued it because of the circumstances, all of the</p> <p>18 calls that were coming in --</p> <p>19 A. Right.</p> <p>20 Q. -- right? And it was also because you wanted to</p> <p>21 avoid a conversation with Commissioner Bodi where</p> <p>22 he might order you not to issue a notice; isn't</p> <p>23 that correct?</p>	<p style="text-align: right;">454</p> <p>1 A. Yes, I -- my goal was to avoid all confrontation</p> <p>2 regarding this matter, yeah.</p> <p>3 Q. You were afraid that he was going to suggest that</p> <p>4 you should not bring a charge.</p> <p>5 A. I was -- I don't know if I've ever testified that</p> <p>6 I was afraid that we were not going to bring a</p> <p>7 charge. I think what I said during my interview</p> <p>8 with your office and during my deposition that I</p> <p>9 wanted to avoid a conversation about whether we</p> <p>10 should bring a charge or not.</p> <p>11 Q. Well, you already talked to him about all sorts of</p> <p>12 things about this case. Why wouldn't you want to</p> <p>13 talk to him about whether you should bring a</p> <p>14 charge?</p> <p>15 A. Two things. Number one, when I talked to the</p> <p>16 Chairman about this case it was about the</p> <p>17 involvement of a Representative, not our normal</p> <p>18 proceedings and how we handle cases. So I have no</p> <p>19 motivation really to talk to the Chairman about</p> <p>20 when I issued the citation. In fact, when I</p> <p>21 issued the notice I told him that the notice had</p> <p>22 been issued.</p> <p>23 Q. You issued the notice, and you instructed your</p>

<p style="text-align: right;">455</p> <p>1 officers to issue it, and then you told</p> <p>2 Commissioner Bodi that it was being issued --</p> <p>3 A. Of course.</p> <p>4 Q. -- so you could avoid that conversation.</p> <p>5 A. I testified to that, yes.</p> <p>6 Q. That's correct. Okay. And when you were told --</p> <p>7 when you told Major Feyrer that the equipment had</p> <p>8 to be returned that evening, I believe you</p> <p>9 testified that you called Major Feyrer, and you</p> <p>10 authorized overtime, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And Major Feyrer expressed concern about whether</p> <p>13 they were even going to be able to get it done</p> <p>14 that night, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And your response to that was we have to get it</p> <p>17 done. We're getting pressure.</p> <p>18 A. Right.</p> <p>19 Q. And that pressure was from Commissioner Bodi,</p> <p>20 correct?</p> <p>21 A. I don't know -- I don't know if I ever said it was</p> <p>22 Commissioner Bodi, but in my eyes I thought the</p> <p>23 pressure was coming from Dan Eaton. I knew</p>	<p style="text-align: right;">456</p> <p>1 exactly where the pressure was coming from because</p> <p>2 Dan --</p> <p>3 Q. Who ordered you to return it?</p> <p>4 A. The Chairman did.</p> <p>5 Q. Are you saying that the Chairman told you that Dan</p> <p>6 Eaton demanded that equipment back?</p> <p>7 A. I'm saying I was in the Chairman's office. When</p> <p>8 we had that initial conversation he was talking to</p> <p>9 Representative Dan Eaton, as I testified earlier,</p> <p>10 and Dan Eaton was calling him about the equipment</p> <p>11 being returned. Absolutely. I heard the</p> <p>12 conversation myself.</p> <p>13 Q. So when you said that you were getting pressure to</p> <p>14 get it back and that you had to do it even despite</p> <p>15 Major Feyrer's concern that it might not get done,</p> <p>16 you were ordering him to take -- to get that</p> <p>17 equipment returned, right?</p> <p>18 A. Yes. What I said to him, "We have to get it</p> <p>19 returned. We have to bring the equipment to</p> <p>20 Keene. Pay the overtime. It has to all be done</p> <p>21 today."</p> <p>22 Q. Okay. And if he couldn't have gotten them in --</p> <p>23 the video footage downloaded that night, if</p>
<p style="text-align: right;">457</p> <p>1 something had happened, what would -- would you</p> <p>2 have returned it?</p> <p>3 A. No. No.</p> <p>4 Q. Because you would have at that point disregarded</p> <p>5 an order?</p> <p>6 A. The -- the instructions that I gave Major Todd</p> <p>7 Feyrer in front of the Chairman were download our</p> <p>8 evidence, and return the equipment. Those were --</p> <p>9 Q. All right.</p> <p>10 A. We need our evidence. Do not give it back until</p> <p>11 we get our evidence.</p> <p>12 Q. And if it had not been done, then you would have</p> <p>13 been returning evidence, correct?</p> <p>14 A. I -- I don't think the major would have returned</p> <p>15 that equipment if we did not secure our evidence.</p> <p>16 Q. I'll move on. We had some questions about the</p> <p>17 policies and how you handle evidence and</p> <p>18 equipment --</p> <p>19 A. Right.</p> <p>20 Q. -- correct? And you were asked about the search</p> <p>21 warrants in similar cases where equipment had</p> <p>22 actually been taken. Do you remember those</p> <p>23 discussions --</p>	<p style="text-align: right;">458</p> <p>1 A. Yes.</p> <p>2 Q. -- with Attorney Young and Dick Tracy?</p> <p>3 A. Um-hum.</p> <p>4 Q. And generally you said that this is standard</p> <p>5 procedure that we would handle the evidence.</p> <p>6 Generally we keep it until the case is disposed</p> <p>7 of.</p> <p>8 A. Generally --</p> <p>9 Q. Do you recall that?</p> <p>10 A. -- yes.</p> <p>11 Q. Okay.</p> <p>12 A. And I explained it. If a licensee asked for their</p> <p>13 equipment, we give it back to 'em.</p> <p>14 Q. And you were also asked the question, "So have you</p> <p>15 ever seen equipment or evidence -- equipment or</p> <p>16 evidence turned around this quickly before in a</p> <p>17 case? Twenty-four to 36 hours." And your answer?</p> <p>18 A. "No."</p> <p>19 Q. In fact, you said -- and I just want to make sure</p> <p>20 that I read this right. "We -- we -- we never do</p> <p>21 it. We don't do it. We -- we just fundamentally</p> <p>22 don't do that. It has got to be some</p> <p>23 extraordinary reason why we would do it. It sits</p>

<p style="text-align: right;">459</p> <p>1 apart from our -- it sits apart our custom and 2 practice. No question about it. It's apart from 3 the way that we do business here." 4 A. Right. 5 Q. Did I read that? 6 A. Yes. 7 Q. So this was an extraordinary circumstance, being 8 ordered to return evidence in 27 hours. 9 A. There's no question about it. Because it was 10 extraordinary circumstances for the State. I 11 don't recall in my tenure ever a legislator 12 putting that type of pressure on an agency to be 13 involved. 14 Q. That wasn't the questions. 15 A. I'm answering your question. 16 Q. I asked you was it extraordinary for the evidence 17 to be returned. Your answer was yes, it was 18 extraordinary, correct? 19 A. No, I gave you my answer. 20 Q. Your previous answers may be different. 21 A. No, I gave you my answer. 22 Q. I want to talk about the letter to the union. And 23 you knew it was being written.</p>	<p style="text-align: right;">460</p> <p>1 A. Yes. 2 Q. You told the Commissioner about it. 3 A. Yes. 4 Q. And he wanted you to stop it. 5 A. Yes, he asked if there's a way that we could stop 6 that from going forward. 7 Q. And you didn't want to do that. 8 A. No. 9 Q. Because you wanted to bring this whole situation 10 to light, correct? 11 A. Absolutely. 12 Q. The whole situation. The involvement of Dan Eaton 13 -- um -- and the order of equipment being 14 returned, correct? 15 A. No. That was part of it. 16 Q. That was part of it. 17 A. Right. But my motivation, just like the officers 18 there, was that we have been getting involvement 19 from an elected official. That's what the initial 20 underlying complaint was about. They also 21 complained about being ordered to return 22 equipment, but the basis for their concern and 23 complaint was the way they felt they were being</p>
<p style="text-align: right;">461</p> <p>1 treated by Representative Dan Eaton. 2 Q. Well, they said in their letter, didn't they, that 3 there was an order that the equipment be returned, 4 and that that was politically influenced, correct? 5 A. Correct. 6 Q. Thank you. And when you told the Commissioner 7 about the letter and he asked you to do something 8 to stop it, he told you that he needed to work 9 with Dan Eaton, right? 10 A. Yes. 11 Q. And that was why he didn't want this to come to 12 light because he needed to work with Dan Eaton. 13 A. Yes. 14 MS. RICE: I have nothing further. Thank 15 you. 16 MR. MCLAUGHLIN: I have one minute. 17 GOVERNOR LYNCH: Yes, Attorney 18 McLaughlin. 19 RE CROSS-EXAMINATION 20 BY MR. MCLAUGHLIN: 21 Q. I'm looking at your statement to the AG. 22 Mr. Edwards' statement to the AG, page 204. 23 MR. MCLAUGHLIN: Eight, Ann.</p>	<p style="text-align: right;">462</p> <p>1 THE WITNESS: Okay. 2 MR. MCLAUGHLIN: I'm just waiting for the 3 AG. 4 MS. RICE: The first or second? 5 MR. MCLAUGHLIN: It's page eight. 6 (Counsel confer off the record.) 7 BY MR. MCLAUGHLIN: 8 Q. In terms of your feelings, your level of anxiety, 9 would it be fair to say that at some point you 10 knew you were going to be issuing a notice to 11 Railroad Tavern and that, I think as you phrased 12 it, when you told the Commissioner that, you were 13 waiting for the possibility for the other shoe to 14 drop, correct? 15 A. Yes. 16 Q. Like the possibility of being ordered not to do 17 that, correct? That's what you were thinking 18 might happen? 19 A. When I told the Commissioner that? 20 Q. No. What I'm saying is when you were responding 21 to a question, and it's set forth at page 204, and 22 Jane Young asks you about two-thirds of the way 23 down, "And that was your decision." We're talking</p>

<p style="text-align: right;">463</p> <p>1 about notice. And you say, "Yes. Yeah. And, you</p> <p>2 know, I'm waiting for -- for the other shoe to</p> <p>3 drop, like no, we're not going to issue a notice,</p> <p>4 but he never said it."</p> <p>5 A. Right.</p> <p>6 Q. Is that your statement?</p> <p>7 A. Right.</p> <p>8 Q. Would it also be fair to say that the --</p> <p>9 essentially the last contact you had with the</p> <p>10 Commissioner over this issue was in -- as you've</p> <p>11 described in response to a question asked toward</p> <p>12 the top of the page, and the question was from</p> <p>13 Jane Young, "And is there any discussion with you</p> <p>14 at that point about what you're going to bring</p> <p>15 charges? Do you have to bring charges?" And go</p> <p>16 down about six lines, and you say -- you're</p> <p>17 talking to the Commissioner. And you say, "He's</p> <p>18 going to get charged." Referring to the</p> <p>19 Commissioner, you say, "And he kind of left it.</p> <p>20 He just let it drop. He didn't say anything else</p> <p>21 after that." Fair?</p> <p>22 A. Correct.</p> <p>23 Q. Thank you.</p>	<p style="text-align: right;">464</p> <p>1 MR. MCLAUGHLIN: No further questions.</p> <p>2 GOVERNOR LYNCH: Okay. At this point I'd</p> <p>3 like to invite members of the Executive Council to</p> <p>4 ask questions of Chief Edwards. Yes, Councilor</p> <p>5 Pignatelli.</p> <p>6 COUNCILOR PIGNATELLI: Good afternoon,</p> <p>7 Chief Edwards.</p> <p>8 THE WITNESS: Good afternoon, ma'am.</p> <p>9 COUNCILOR PIGNATELLI: You don't mind if</p> <p>10 I ask you a couple of questions, do you?</p> <p>11 THE WITNESS: No, ma'am.</p> <p>12 COUNCILOR PIGNATELLI: This is regarding</p> <p>13 the issue of your discussion with Commissioner</p> <p>14 Bodi about returning the evidence or the</p> <p>15 equipment.</p> <p>16 THE WITNESS: Yes, ma'am.</p> <p>17 COUNCILOR PIGNATELLI: When Commissioner</p> <p>18 Bodi ordered the return of the equipment, do you</p> <p>19 think he knew that evidence would be lost if you</p> <p>20 returned the equipment at the time he -- he</p> <p>21 ordered you to?</p> <p>22 THE WITNESS: I -- I don't think that the</p> <p>23 Chairman thought that. I never expressed that to</p>
<p style="text-align: right;">465</p> <p>1 him. I think he was -- as I said, he was -- I was</p> <p>2 in his presence when I gave the order to Major</p> <p>3 Todd Feyrer to return the equipment, though to</p> <p>4 seize our evidence from it. So he was in the room</p> <p>5 when I gave that order, so I'm not sure if he</p> <p>6 fully knew.</p> <p>7 COUNCILOR PIGNATELLI: So he didn't say</p> <p>8 get the evidence you need, then return the</p> <p>9 equipment.</p> <p>10 THE WITNESS: Hmm. I don't recall. I</p> <p>11 just don't recall that being said.</p> <p>12 COUNCILOR PIGNATELLI: Okay. I'm going</p> <p>13 to just read you a couple of brief statements that</p> <p>14 Commissioner Bodi made in his opening yesterday.</p> <p>15 THE WITNESS: Okay.</p> <p>16 COUNCILOR PIGNATELLI: He said -- these</p> <p>17 are direct quotes. "I did return the camera</p> <p>18 equipment but not the film. I had a</p> <p>19 responsibility to deal with Filiault's claim that</p> <p>20 he needed his video equipment back, otherwise he</p> <p>21 would be set up for licensure seizure. Given the</p> <p>22 totality of the facts as I knew them and the</p> <p>23 circumstances as they existed at that time,</p>	<p style="text-align: right;">466</p> <p>1 rightly or wrongly, I instructed the Chief to</p> <p>2 return the equipment in an attempt to loosen</p> <p>3 Eaton's assertive hand and to defuse a near</p> <p>4 explosive situation. I reasoned that the</p> <p>5 equipment had no evidentiary value, and its return</p> <p>6 would quiet Eaton as well as the bar owner until</p> <p>7 we could deal with the matter with more guidance</p> <p>8 and knowledge. Again, as I conveyed to the Grand</p> <p>9 Jury, never did I intend to suppress evidence or</p> <p>10 obstruct or interfere with the investigation in</p> <p>11 any way." And, last, "I made the decision to have</p> <p>12 the equipment returned because of assertions of</p> <p>13 Eaton and the bar owner were making over the</p> <p>14 illegal seizure of equipment, not evidence. They</p> <p>15 wanted the equipment back, not the evidence. And</p> <p>16 I logically assumed the equipment was the cameras</p> <p>17 and such, not the CDs, and certainly not anything</p> <p>18 that would be considered evidence."</p> <p>19 So, based on your discussion, do you have</p> <p>20 a thought as to what I just read?</p> <p>21 THE WITNESS: With the Chairman's</p> <p>22 statements, I -- I -- based off my statement with</p> <p>23 the Chairman, I would say those statements were</p>

<p style="text-align: right;">467</p> <p>1 true.</p> <p>2 COUNCILOR PIGNATELLI: And would it have</p> <p>3 been a crime if Commissioner Bodi ordered you to</p> <p>4 return the equipment with the evidence still on</p> <p>5 it?</p> <p>6 THE WITNESS: That would have been a</p> <p>7 crime, and I think he would have been charged by</p> <p>8 the Attorney General's Office.</p> <p>9 COUNCILOR PIGNATELLI: He wasn't charged</p> <p>10 with a -- with a criminal offense.</p> <p>11 THE WITNESS: Correct.</p> <p>12 COUNCILOR PIGNATELLI: Was it under your</p> <p>13 initiative that you downloaded the evidence before</p> <p>14 returning the equipment?</p> <p>15 THE WITNESS: When I gave the order to</p> <p>16 Major Feyrer, those were the instructions; that</p> <p>17 make sure we get our evidence because the</p> <p>18 equipment has to go back.</p> <p>19 COUNCILOR PIGNATELLI: That was your idea</p> <p>20 to do that?</p> <p>21 THE WITNESS: I said that to him, yes.</p> <p>22 Yeah. Yeah. It was my direction, yes.</p> <p>23 COUNCILOR PIGNATELLI: All right. Thank</p>	<p style="text-align: right;">468</p> <p>1 you very much, Chief.</p> <p>2 GOVERNOR LYNCH: Thank you. Councilor</p> <p>3 Burton, do you have questions?</p> <p>4 COUNCILOR BURTON: No.</p> <p>5 GOVERNOR LYNCH: Any other questions?</p> <p>6 COUNCILOR HOLLINGWORTH: Yes.</p> <p>7 GOVERNOR LYNCH: Councilor Hollingworth.</p> <p>8 COUNCILOR HOLLINGWORTH: If I could</p> <p>9 quickly. Good afternoon.</p> <p>10 THE WITNESS: Good afternoon, ma'am.</p> <p>11 COUNCILOR HOLLINGWORTH: I'm a little</p> <p>12 confused. I wasn't sure. Did you -- you stated</p> <p>13 at one point that everything that Representative</p> <p>14 Eaton had told the Commissioner was untruthful.</p> <p>15 THE WITNESS: Yes.</p> <p>16 COUNCILOR HOLLINGWORTH: There was --</p> <p>17 there was no basis at all for the event that was</p> <p>18 described by Mr. -- Representative Eaton that two</p> <p>19 officers went into the Railroad Tavern in what he</p> <p>20 called SWAT clothing and stood on the dance floor</p> <p>21 with their arms crossed?</p> <p>22 THE WITNESS: No, ma'am, that's -- that's</p> <p>23 totally untrue.</p>
<p style="text-align: right;">469</p> <p>1 COUNCILOR HOLLINGWORTH: There was no --</p> <p>2 um -- your officers did not do that?</p> <p>3 THE WITNESS: With all due respect,</p> <p>4 ma'am, I'm not being funny. That's -- to me,</p> <p>5 that's silliness. There's no way that trained,</p> <p>6 sworn law enforcement officers -- these people are</p> <p>7 probably -- they take polygraph tests. They go</p> <p>8 through psychological testing, credit checks.</p> <p>9 There's a thorough review of their integrity. And</p> <p>10 I'm not seeing one officer from our agency going</p> <p>11 to an establishment, standing on the dance floor</p> <p>12 with his arms crossed and wait till the dance</p> <p>13 floor clears, and they walk out laughing. I just</p> <p>14 find that alarming and ridiculous. And if that</p> <p>15 has happened, I'm not sure why Dan --</p> <p>16 Representative Dan Eaton wouldn't call the</p> <p>17 Chairman about that incident or certainly seize</p> <p>18 the evidence or call the Attorney General's Office</p> <p>19 or someone else and make a complaint. I just find</p> <p>20 it silly.</p> <p>21 COUNCILOR HOLLINGWORTH: Thank you.</p> <p>22 Apparently he did call the Commissioner about</p> <p>23 that.</p>	<p style="text-align: right;">470</p> <p>1 THE WITNESS: I'm not sure if he called</p> <p>2 the Chairman about that. I know it was brought up</p> <p>3 during our -- um -- summer study review. He made</p> <p>4 that allegation during -- he questioned me. He</p> <p>5 questioned me about that, and at that point I</p> <p>6 said, "Do you have copies of the video? Because</p> <p>7 we would love to see it." And he said at that</p> <p>8 point -- asked Major Todd Feyrer. He goes, "There</p> <p>9 is no evidence." And allegedly this conduct</p> <p>10 happened at the Railroad Tavern. Um -- so I'm not</p> <p>11 sure at what place and when it happened.</p> <p>12 COUNCILOR HOLLINGWORTH: The -- I think</p> <p>13 you stated earlier that the -- usually a search</p> <p>14 warrant is when there has been an accident or a</p> <p>15 serious accident or fatality. Is it usual to do</p> <p>16 one when you think there has been overserving?</p> <p>17 THE WITNESS: Um -- typically, we don't</p> <p>18 do one in just a -- and I hate to say the word</p> <p>19 standard overservice case because we don't have</p> <p>20 all that many, but in those it's really fact</p> <p>21 driven. It is really a dynamic situation. It's</p> <p>22 really fact driven. The lion's share of our</p> <p>23 cases, we don't seek search warrants when we're</p>

<p style="text-align: right;">471</p> <p>1 doing routinely -- it really depends on the</p> <p>2 circumstances. If there's -- there's no way to do</p> <p>3 it prior to this case without a search warrant</p> <p>4 because of the political involvement that</p> <p>5 surrounds this case.</p> <p>6 COUNCILOR HOLLINGWORTH: But there</p> <p>7 wouldn't have been political involvement until</p> <p>8 after the search warrant took place; is that</p> <p>9 correct?</p> <p>10 THE WITNESS: No, ma'am. No, ma'am.</p> <p>11 Representative Dan Eaton has a -- um -- friendship</p> <p>12 or a connection with Randy Filiault, who's a local</p> <p>13 elected official, and with our former Commissioner</p> <p>14 Pat Russell. And we heard a number of complaints</p> <p>15 and assertions from Representative Dan Eaton about</p> <p>16 the Railroad Tavern long before this investigation</p> <p>17 took place, and that's why I think Representative</p> <p>18 Dan Eaton called the Chairman and falsely misled</p> <p>19 him and said that we're targeting this licensee.</p> <p>20 COUNCILOR HOLLINGWORTH: Did I also hear</p> <p>21 you say that you were told by a prior Commissioner</p> <p>22 not to go to certain bars and that you didn't?</p> <p>23 THE WITNESS: Commissioner Russell was</p>	<p style="text-align: right;">472</p> <p>1 concerned as well that -- um -- in her mind, I</p> <p>2 guess, that -- um -- we were having problems in</p> <p>3 the City of Manchester with a couple of</p> <p>4 establishments there. She felt that we should not</p> <p>5 be getting involved, and she said that, "You guys</p> <p>6 shouldn't be going down there." So when I use the</p> <p>7 characterization of an order, it was more in the</p> <p>8 framework of suggestions that we shouldn't go</p> <p>9 there because it's going to create trouble.</p> <p>10 COUNCILOR HOLLINGWORTH: And did you go?</p> <p>11 THE WITNESS: Absolutely.</p> <p>12 COUNCILOR HOLLINGWORTH: When you viewed</p> <p>13 the video at the Railroad Tavern did you see the</p> <p>14 interaction of Representative Eaton on that video?</p> <p>15 THE WITNESS: I don't believe</p> <p>16 Representative Eaton was ever captured on video.</p> <p>17 The -- um -- video footage that I reviewed from</p> <p>18 the Railroad Tavern had to do with the young lady</p> <p>19 who was inside the establishment.</p> <p>20 COUNCILOR HOLLINGWORTH: Was video</p> <p>21 running while Representative Eaton was there and</p> <p>22 the search warrant was in process?</p> <p>23 THE WITNESS: I don't think it was.</p>
<p style="text-align: right;">473</p> <p>1 COUNCILOR HOLLINGWORTH: I think that's</p> <p>2 all for now.</p> <p>3 GOVERNOR LYNCH: Thank you, Councilor</p> <p>4 Hollingworth. Any other questions? Councilor</p> <p>5 Shea.</p> <p>6 COUNCILOR SHEA: Chief, I'm curious.</p> <p>7 Right after this happened all of a sudden there's</p> <p>8 press releases coming out from your staff and</p> <p>9 you. Wasn't that highly unusual?</p> <p>10 THE WITNESS: No, sir. And thank you for</p> <p>11 the question, too, because I certainly want to</p> <p>12 make this clear for the record. I was very</p> <p>13 offended, to be completely honest with you. I</p> <p>14 was -- and with all due respect to you and</p> <p>15 Councilor Wiecezorek, I understand that the</p> <p>16 information you got from Attorney General Delaney</p> <p>17 was concerning to you, but it's not what</p> <p>18 happened. I asked -- and that's why I asked the</p> <p>19 Attorney General's Office if I could delay my case</p> <p>20 until they completed their criminal case.</p> <p>21 When I made those comments to the press,</p> <p>22 I was referring to our case. That was about</p> <p>23 corruption and collusion, and those are the</p>	<p style="text-align: right;">474</p> <p>1 comments I made about my case. And, in fact,</p> <p>2 before I made those comments to the press I called</p> <p>3 the Attorney General's Office. I asked, "Is there</p> <p>4 anything you want me to do differently in this</p> <p>5 case? The media is calling. What would you like</p> <p>6 me to do?" "Do what you normally do."</p> <p>7 And when I met with Attorney Michael</p> <p>8 Delaney some weeks after that to discuss this</p> <p>9 matter -- I think it was Councilor Ray Wiecezorek</p> <p>10 asked him, "Did you call the Chief and tell him?"</p> <p>11 He said, "No." I made those comments on a</p> <p>12 Friday. Attorney General Michael Delaney had my</p> <p>13 cell phone number. I didn't hear from him Friday,</p> <p>14 Saturday, Sunday, Monday or Tuesday. I heard from</p> <p>15 him Wednesday during Governor and Council. And I</p> <p>16 said to him, "You had five days to call me and</p> <p>17 tell me you were upset. And you would have known</p> <p>18 that I called your office." So those comments I</p> <p>19 made were not unusual at all.</p> <p>20 COUNCILOR SHEA: It just seemed unusual</p> <p>21 reading the press, coming from the western part of</p> <p>22 the state. It seemed like a deliberate attack</p> <p>23 right away on Eddie -- on Eaton. Dan Eaton. But</p>

<p style="text-align: right;">475</p> <p>1 I just mention the lawyers. I'm kind of curious.</p> <p>2 The Liquor Commission had a lawyer on their staff,</p> <p>3 and apparently they had him reassigned. Wouldn't</p> <p>4 it have been helpful to have a lawyer on that</p> <p>5 staff available? For instance, when you go in</p> <p>6 with a complaint, and the bar comes in with three</p> <p>7 lawyers to argue --</p> <p>8 GOVERNOR LYNCH: Councilor Shea, will you</p> <p>9 turn your mike on, please, or get closer to it.</p> <p>10 People are having a hard time hearing you.</p> <p>11 COUNCILOR SHEA: How do you turn it on?</p> <p>12 Wouldn't it have been helpful if there was a</p> <p>13 lawyer on that stuff available? I've heard bars</p> <p>14 coming with two or three lawyers, and you have no</p> <p>15 lawyer to sit in on these hearings even.</p> <p>16 THE WITNESS: Generally speaking, when</p> <p>17 attorneys come to see myself in a prehearing</p> <p>18 conference, what we call it -- um -- we're looking</p> <p>19 at facts and circumstances surrounding a</p> <p>20 violation, and we're trying to come to an</p> <p>21 agreement to save the licensee money as well as</p> <p>22 the State in those settlement agreements in terms</p> <p>23 of the cost of administering that violation. The</p>	<p style="text-align: right;">476</p> <p>1 Chairman absolutely wanted an attorney on staff.</p> <p>2 I think it was -- um -- Attorney General</p> <p>3 Bud Fitch who came to the Commissioners and</p> <p>4 indicated that our attorney needed supervision and</p> <p>5 that the Commissioners are not attorneys. They're</p> <p>6 not capable of supervising attorneys, and all of</p> <p>7 the attorneys should be under the direction of the</p> <p>8 Attorney General's Office, and if we could assign</p> <p>9 our attorney under their supervision, that the</p> <p>10 Commission will be better served.</p> <p>11 Now, I was not completely in favor of</p> <p>12 that. In fact, when we met with Attorney Mike</p> <p>13 Brown from the Attorney General's Office, who came</p> <p>14 to tell -- to explain to the Chairman what type of</p> <p>15 legal services now we would be getting from the</p> <p>16 Attorney General's Office, I asked if -- during</p> <p>17 that meeting when you give us legal advice and</p> <p>18 guidance can you put it in writing, and they</p> <p>19 refused to.</p> <p>20 And, in fact, the Chairman and I had some</p> <p>21 discussion about that because it was my feeling</p> <p>22 that we're calling you for legal assistance and</p> <p>23 legal guidance. It should be in writing so</p>
<p style="text-align: right;">477</p> <p>1 there's a history of what happened and there is</p> <p>2 history within organizations, and that creates a</p> <p>3 record. And I was very concerned about that, and</p> <p>4 I told Mike Brown that, that we needed legal</p> <p>5 assistance, and when we needed that legal</p> <p>6 assistance it needed to be in writing.</p> <p>7 COUNCILOR SHEA: There was another</p> <p>8 comment made about the van, and I've heard three</p> <p>9 different versions now about the van. Sometime</p> <p>10 I'd like to find out the truth on that. I want to</p> <p>11 go back to communication. It seems to be a lack</p> <p>12 of communication within the Commission. For</p> <p>13 instance, the Chairman couldn't discuss this case</p> <p>14 with the other Commissioner, but there's three</p> <p>15 Commissioners. They should all be aware of what's</p> <p>16 going on in the Commission. And they -- it seems</p> <p>17 that someone calls into the Commissioner's office,</p> <p>18 and one of the other Commissioners picks it up,</p> <p>19 and he hasn't been told there's something pending,</p> <p>20 it would be very embarrassing, I would think.</p> <p>21 Also, there was a hearing at the -- by</p> <p>22 the House with two Commissioners were being</p> <p>23 questioned about who supervises you. They didn't</p>	<p style="text-align: right;">478</p> <p>1 have an answer, and they finally said he does. Is</p> <p>2 your communications good with all the</p> <p>3 Commissioners? I mean do you make an attempt that</p> <p>4 all Commissioners are aware of pertinent</p> <p>5 information that they should be aware of?</p> <p>6 THE WITNESS: Yes, sir. And I think if</p> <p>7 you look at that incident, how it happened, how it</p> <p>8 shaped up, myself, the Director from Marketing,</p> <p>9 the Director of Administration, we all report</p> <p>10 directly to the Commissioners, and we keep every</p> <p>11 Commissioner apprised. There are certain</p> <p>12 Commissioners that the Marketing Division works</p> <p>13 with on a regular basis. There are certain</p> <p>14 Commissioners that the Enforcement Division works</p> <p>15 with on a regular basis, and we report to the</p> <p>16 Commissioners, but we have weekly staff meetings</p> <p>17 and weekly agendas where all three Commissioners</p> <p>18 are promptly informed.</p> <p>19 I think, and my own opinion, when that</p> <p>20 question was asked of Commissioner Mollica, who I</p> <p>21 think had less than four weeks on the job, was</p> <p>22 asked of Commissioner Richard Simard about who</p> <p>23 supervises who, and just like every other Director</p>

<p style="text-align: right;">479</p> <p>1 in State Government I report to a Commissioner. 2 The statute lays that out. The administrative 3 rules lay that out, and I'm no different than any 4 other Director who I report to. Personally 5 speaking, I found it to be a very unfair question 6 to a new Commissioner and almost publicly 7 attacking the Commissioners. 8 COUNCILOR SHEA: One last question. 9 There was a comment made in here when the Chairman 10 was giving a -- some of the Superior Court. "The 11 Chief is a very rigid man, and there are times I 12 would say he makes an arrow look crooked." What 13 does that mean? Do you have any idea? 14 THE WITNESS: I think I'm one of the 15 finest people in New Hampshire, but -- 16 (Laughter.) 17 THE WITNESS: Suppose I'm not. But I 18 think many people, including the Chairman, would 19 say that I'm rigid. I -- I believe in following 20 the law, and I believe there are certain things 21 that when you work in government you shouldn't do, 22 and so if that makes me rigid, then I guess I'm 23 rigid. And, as far as I believe, that as long as</p>	<p style="text-align: right;">480</p> <p>1 I work in the position that I'm in, if I know 2 something is wrong, I'm going to report it. I'm 3 going to enforce the law. So if that makes me 4 rigid, I guess I'm rigid. 5 COUNCILOR SHEA: No more questions. 6 GOVERNOR LYNCH: Go ahead, Councilor. 7 COUNCILOR HOLLINGWORTH: Ray has one. 8 GOVERNOR LYNCH: Go ahead. 9 COUNCILOR WIECZOREK: Chief, I'm going to 10 get back a little bit to the cameras and the stuff 11 that were in the restaurant. Those -- that's a 12 normal thing that you have these cameras in these 13 restaurants or is it unusual? 14 THE WITNESS: No, I'd say over the last 15 couple of years, maybe over the last five years 16 many restaurant owners moved to put cameras in 17 their establishment. 18 COUNCILOR WIECZOREK: Now, in this 19 particular instance when you confiscated the 20 equipment and you found out that there was only 21 nine minutes, is that -- where was the previous 22 footage? And how did it only get nine minutes? 23 THE WITNESS: It was my understanding</p>
<p style="text-align: right;">481</p> <p>1 that the investigators went there. They asked 2 Randy Filiault to download the three hours. They 3 gave him the hours they were looking for to 4 download onto the CD. Um -- when they left they 5 assumed they had the three hours that they came 6 for. They did a on-site review, and there was 7 footage on there, so they assumed it was all three 8 hours. When they got back to headquarters they 9 realized it was only nine minutes of footage. 10 COUNCILOR WIECZOREK: Well, nine minutes 11 and three hours. I mean that's a big difference. 12 Can't you tell when you look at whatever reel you 13 have that there's not three hours on there? 14 THE WITNESS: Well, on a disk I'm not 15 sure if you can tell that unless you reviewed the 16 entire thing. And, as I said, when they were at 17 the location, you have to remember that there was 18 a little bit of -- they went through the process 19 and were near the end, and there was pressure 20 there. So I'm not sure they -- they didn't take 21 their time because of that. But I know they 22 returned, and they only had nine minutes of 23 footage.</p>	<p style="text-align: right;">482</p> <p>1 COUNCILOR WIECZOREK: When they were 2 there they were there because of the warrant that 3 was being served, correct? 4 THE WITNESS: Yes, sir. 5 COUNCILOR WIECZOREK: Okay. And when 6 Representative Eaton came in was the camera still 7 going or did somebody shut the camera off? 8 THE WITNESS: I'm going to assume -- I 9 don't know, but I assume that the cameras were not 10 working because they were trying to download 11 footage. And it's my understanding in talking to 12 the investigators that Dan Eaton showed up towards 13 the latter part of it. It was like five minutes, 14 10 minutes before he left he was -- that's when 15 the Representative came in. 16 COUNCILOR WIECZOREK: Was he ever there 17 when they had camera footage showing that he was 18 there when something was going on? 19 THE WITNESS: If there was footage of 20 that, we never obtained it. We didn't get any of 21 that. 22 COUNCILOR WIECZOREK: You didn't get it. 23 THE WITNESS: No.</p>

<p style="text-align: right;">483</p> <p>1 COUNCILOR WIECZOREK: Okay. Thank you.</p> <p>2 GOVERNOR LYNCH: Councilor Hollingworth.</p> <p>3 COUNCILOR HOLLINGWORTH: Yes. I'm</p> <p>4 wondering why you yourself personally wouldn't</p> <p>5 have called the Attorney General's Office when you</p> <p>6 thought that there was political involvement.</p> <p>7 THE WITNESS: I'd be happy to answer that</p> <p>8 question. I instructed -- I've called the</p> <p>9 Attorney General's Office on separate cases</p> <p>10 involving political --</p> <p>11 COUNCILOR WIECZOREK: Is your mike on?</p> <p>12 COUNCILOR HOLLINGWORTH: Sorry. The</p> <p>13 question was why did you not make the call</p> <p>14 personally when you felt there was political</p> <p>15 involvement to the Attorney General's Office?</p> <p>16 THE WITNESS: I called the Attorney</p> <p>17 General's Office personally on a separate case and</p> <p>18 complained, and I was told that it is not a -- a</p> <p>19 public integrity issue. It was a personnel</p> <p>20 issue. That was my involvement in calling the</p> <p>21 Attorney General's Office during the last time</p> <p>22 that there was an involvement of a political</p> <p>23 nature. This time I instructed the major to call</p>	<p style="text-align: right;">484</p> <p>1 and not give the name, just to say there was a</p> <p>2 generic State Representative interfering.</p> <p>3 COUNCILOR HOLLINGWORTH: But you said you</p> <p>4 -- the reason why you didn't do it in this case</p> <p>5 and why you didn't give the name is why?</p> <p>6 THE WITNESS: I've had past experience</p> <p>7 with the Attorney General's Office personally when</p> <p>8 I've called to ask for assistance to report</p> <p>9 political interference in the case, and I have</p> <p>10 been told it's a personnel issue. It is not a</p> <p>11 public integrity issue. That's my experience with</p> <p>12 that office in reporting political interference.</p> <p>13 COUNCILOR HOLLINGWORTH: Chief, who</p> <p>14 appointed you the Chief?</p> <p>15 THE WITNESS: Um -- I was appointed by</p> <p>16 Commissioner -- or Chairman Maiola, Commissioner</p> <p>17 Byrne and Commissioner Russell.</p> <p>18 COUNCILOR HOLLINGWORTH: And what was</p> <p>19 your relationship with them?</p> <p>20 THE WITNESS: Well, Commissioner Maiola,</p> <p>21 I don't know of anyone that didn't enjoy working</p> <p>22 with Commissioner Maiola. He was a very wonderful</p> <p>23 man. He was a great leader, I thought. He cared</p>
<p style="text-align: right;">485</p> <p>1 very much for his staff, and he did a wonderful</p> <p>2 job. Commissioner Byrne, I learned a lot about</p> <p>3 the liquor industry in terms of marketing from</p> <p>4 Commissioner Byrne. I'm very appreciative of him</p> <p>5 for my knowledge I gained from him. Commissioner</p> <p>6 Russell, my relationship with Commissioner Russell</p> <p>7 deteriorated over the years. When I was a</p> <p>8 sergeant in Keene where she was a former mayor, it</p> <p>9 was a fairly decent relationship because I did not</p> <p>10 work with her on a daily basis. As I progressed</p> <p>11 through the agency, my relationship with her</p> <p>12 deteriorated.</p> <p>13 COUNCILOR HOLLINGWORTH: Thank you.</p> <p>14 GOVERNOR LYNCH: Any further questions</p> <p>15 from the Councilors? Chief Edwards, thank you</p> <p>16 very much.</p> <p>17 THE WITNESS: Thank you, sir.</p> <p>18 GOVERNOR LYNCH: Are we ready to continue</p> <p>19 to proceed or does anybody want a break for a</p> <p>20 couple minutes?</p> <p>21 MR. MCLAUGHLIN: We can continue.</p> <p>22 MS. RICE: Continue. Our next witness is</p> <p>23 Major Todd Feyrer.</p>	<p style="text-align: right;">486</p> <p>1 (There is a pause in the proceedings.)</p> <p>2 MS. RICE: He is parking his car. He's</p> <p>3 going to be a couple of minutes.</p> <p>4 GOVERNOR LYNCH: Okay. So the next</p> <p>5 witness is parking his car. So he'll be a few</p> <p>6 minutes, so feel free to stretch while we're</p> <p>7 waiting for him to arrive.</p> <p>8 (The proceedings are recessed at</p> <p>9 1:58 p.m.)</p> <p>10 (The proceedings reconvene on the record</p> <p>11 at 2:02 p.m.)</p> <p>12 GOVERNOR LYNCH: Okay. Why don't we</p> <p>13 continue. Attorney Rice.</p> <p>14 MS. RICE: Thank you. Can you raise your</p> <p>15 right hand.</p> <p>16 TESTIMONY OF TODD FEYRER,</p> <p>17 who was called as a witness and, having been first</p> <p>18 duly sworn, was examined and testified as follows:</p> <p>19 BY MS. RICE:</p> <p>20 Q. Thank you. Can you take a seat, please. And if</p> <p>21 you could introduce yourself to the Governor and</p> <p>22 the members of the Executive Council.</p> <p>23 A. Good afternoon. My name is Todd Feyrer.</p>

<p style="text-align: right;">487</p> <p>1 Q. And can you spell your last name for the court 2 reporter. 3 A. F, as in Frank, e-y-r-e-r. 4 Q. And what's your current position? 5 A. Major with State Liquor Enforcement. 6 Q. How long have you been there? 7 A. Since May of 2008. 8 Q. And prior to 2008 were you involved in law 9 enforcement anywhere else? 10 A. Yes, I was. 11 Q. Where were you in law enforcement? 12 A. I was Chief of Police for the Town of Antrim for 13 three years prior to that, and then I spent 11 14 years with the Town of Jaffrey starting in 1994. 15 Q. So you've been involved for quite some time. 16 A. Yes. 17 Q. Okay. What are your responsibilities as a major 18 for the Liquor Enforcement Division? 19 A. Currently I oversee the Licensing Unit, the 20 Auditing, Direct Shipping Units, the Training 21 Unit, Special Operations Unit. I'm also in charge 22 of internal affairs and accreditation. 23 Q. And internal affairs, what does that mean?</p>	<p style="text-align: right;">488</p> <p>1 A. Any internal investigations involving complaints 2 or misconduct from enforcement employees. 3 Q. So if -- if there was a complaint made about one 4 of your employees, one of the Liquor Commission's 5 employees, you would be the one responsible or 6 someone in your division would be responsible for 7 investigating that? 8 A. It depends on the nature of what the complaint is, 9 but yes, if it rises to the level of a serious 10 nature or a citizen complaint against an 11 investigator, then it would specifically rise to 12 an internal affairs investigation as opposed to a 13 minor issue where we try to handle it on the 14 lowest level possible, i.e., the first line 15 supervisor or the lieutenant. 16 Q. Okay. If someone was accused of -- if one of your 17 employees was accused of barnstorming, acting like 18 a barnstormer, running into someplace where they 19 were doing an investigation and ripping 20 surveillance equipment out off the wall, is that 21 the kind of thing you might investigate? 22 A. Yes. 23 Q. Okay. And if a licensee had a complaint that he</p>
<p style="text-align: right;">489</p> <p>1 or she was being unfairly targeted by the Liquor 2 Enforcement Agency, is that the kind of complaint 3 that would come to you? 4 A. Yes. 5 Q. How do complaints come to you? 6 A. Various natures. It could simply rise up through 7 the chain of command where an investigator is made 8 aware of it through any of their constituents or, 9 you know, other licensees, and they bring it up 10 through the chain of command. It could be where 11 it comes from the top down; that the Commissioner 12 is notified and through the Director and through 13 the deputy, and then it comes to me for an 14 official assignment of an internal affairs. When 15 I said I was in charge of that, the Special 16 Investigations Unit, well, I oversee it. 17 Technically, it would be the sergeant in that unit 18 that would do most of the internal investigations 19 unless it's something that involves another 20 supervisor, in which case I would do it. 21 Q. Okay. So it could come from a Commissioner. It 22 could come from anywhere. 23 A. Right.</p>	<p style="text-align: right;">490</p> <p>1 Q. It could come from a citizen. 2 A. Yes. 3 Q. All right. So has -- in his time with the 4 Commission, do you recall Commissioner Bodi had 5 ever referred a complaint to you? 6 A. Not that I recall to me directly, and that's not 7 to say that they may have gone to the Director, 8 and then the Director had given one to me, but I 9 don't recall specifically coming from the 10 Chairman. 11 Q. So you don't necessarily know the source of the 12 complaint all the time? 13 A. Um -- not necessarily. I mean for the most part 14 we will simply because if we're going to complete 15 an internal affairs investigation, we certainly 16 want to vet all that information and get as much 17 of that as we can, so the source is usually 18 determined. 19 Q. I notice you're trying to look at them when you're 20 answering your questions, and I think that's very 21 polite, and I don't mind you looking at them if 22 you want to. I know that's the normal way that 23 officers are trained to testify.</p>

<p style="text-align: right;">491</p> <p>1 A. Okay. Thank you.</p> <p>2 Q. Did the Division of Liquor Enforcement have</p> <p>3 standard operating procedures?</p> <p>4 A. Yes.</p> <p>5 Q. And are these provided to the Commissioners?</p> <p>6 A. Absolutely.</p> <p>7 Q. And I want to talk to you about a couple of</p> <p>8 procedures. The first one, it has been marked as</p> <p>9 State's Exhibit 6, and it is called, "Citizen</p> <p>10 Complaints and Internal Investigations, Chapter</p> <p>11 P-251." Are you familiar with that?</p> <p>12 A. Yes.</p> <p>13 Q. Can you tell me when that policy became effective?</p> <p>14 A. October 1st, 2007.</p> <p>15 Q. 2007. Okay. So was it in effect in 2009, in</p> <p>16 December of 2009?</p> <p>17 A. Yes.</p> <p>18 Q. And I asked you earlier about whether a complaint</p> <p>19 about investigators ripping equipment off</p> <p>20 someone's wall, a licensee's wall, whether that</p> <p>21 would come to you as a complaint. You said that</p> <p>22 it probably would; is that correct?</p> <p>23 A. Correct.</p>	<p style="text-align: right;">492</p> <p>1 Q. And would it come to you in accordance with that</p> <p>2 procedure?</p> <p>3 A. Yes.</p> <p>4 Q. Did any complaint come to you in that manner?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now, I want to ask you about the</p> <p>7 investigation into the Railroad Tavern, and the</p> <p>8 Governor and the Executive Council members have</p> <p>9 heard a lot of testimony about it, so I am going</p> <p>10 to avoid asking repetitive questions about</p> <p>11 things. At some point, though, you were involved</p> <p>12 in the discussion about going back to get a second</p> <p>13 search warrant at the Railroad Tavern; is that</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And what was the purpose for going back to the</p> <p>17 Railroad Tavern for the second search warrant?</p> <p>18 A. Because during the execution of the first search</p> <p>19 warrant only nine minutes of videotape were</p> <p>20 recorded, and it was important that we return and</p> <p>21 actually get all the evidence that was left</p> <p>22 behind.</p> <p>23 Q. And what were the concerns about going back there?</p>
<p style="text-align: right;">493</p> <p>1 A. The concerns basically were because of the first</p> <p>2 incident where Sergeant Elliott and Sergeant</p> <p>3 Fussell executed the first search warrant, there</p> <p>4 was -- they were approached by State</p> <p>5 Representative Dan Eaton and felt, I guess,</p> <p>6 intimidated by that transaction, and as a result</p> <p>7 there was some concern about the political</p> <p>8 implications of when we went back there and -- um</p> <p>9 -- the -- um -- I don't know how to word it, I</p> <p>10 guess, but the previous history with</p> <p>11 Representative Eaton as well as the past contacts</p> <p>12 with the Railroad Tavern.</p> <p>13 Q. Okay. And you're referring to the previous</p> <p>14 history being the legislation about transferring</p> <p>15 the Liquor Commission -- or transferring the</p> <p>16 Division of Enforcement and also some allegations</p> <p>17 about Dan Eaton having some political vendetta</p> <p>18 against Eddie Edwards; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Were you personally instructed to do anything by</p> <p>21 the Chief in preparation for that second search</p> <p>22 warrant?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">494</p> <p>1 Q. What was that?</p> <p>2 A. Contact the Attorney General's Office to request</p> <p>3 their assistance as a third party, neutral party,</p> <p>4 to assist us when we executed the second search</p> <p>5 warrant.</p> <p>6 Q. So you were calling them to have an investigator</p> <p>7 go as a neutral party. Is that what you said or</p> <p>8 impartial party?</p> <p>9 A. Correct.</p> <p>10 Q. What do you mean by that?</p> <p>11 A. Just as another witness to observe the fact that</p> <p>12 we were concerned that if Representative Eaton did</p> <p>13 show up again, that we had somebody from the</p> <p>14 Attorney General's Office to bear witness to what</p> <p>15 was going on.</p> <p>16 Q. Was your purpose in calling the Attorney General's</p> <p>17 Office to report a public integrity crime?</p> <p>18 A. I can't answer that. I don't -- that wasn't my</p> <p>19 intention. My intention of the phone call was</p> <p>20 merely to ask for assistance from the office to</p> <p>21 assist us with that. We weren't sure -- number</p> <p>22 one, I believe at that point in time there wasn't</p> <p>23 even an official complaint filed by the sergeants</p>

<p style="text-align: right;">495</p> <p>1 that went down there at that point, and it was</p> <p>2 more of a kind of a cover us or have somebody else</p> <p>3 there as a -- like I said, a third party to avoid</p> <p>4 any other scrutiny or ridicule on our part.</p> <p>5 Q. Okay. So did you actually make that call?</p> <p>6 A. Yes.</p> <p>7 Q. And did you have any specific instructions about</p> <p>8 the call when -- before you made it?</p> <p>9 A. Yes.</p> <p>10 Q. What were those instructions?</p> <p>11 A. That was to not let the Attorney General's Office</p> <p>12 know -- or whoever I was speaking to -- that it</p> <p>13 was specifically Dan Eaton that was the State Rep</p> <p>14 that was down there.</p> <p>15 Q. And why would that -- why were you instructed that</p> <p>16 way? Do you know?</p> <p>17 A. I think -- and, again, certainly in conversations</p> <p>18 I've had with Director Edwards, but there was some</p> <p>19 concern that with the political issues and the</p> <p>20 cost involvement with Representative Eaton and our</p> <p>21 agency and the Commission, they were trying to get</p> <p>22 us transferred, that there was obviously, I guess,</p> <p>23 some concern that if you knew or the Attorney</p>	<p style="text-align: right;">496</p> <p>1 General's Office knew that it was Representative</p> <p>2 Eaton, that they wouldn't have wanted to get</p> <p>3 involved because of the potential conflict of</p> <p>4 interest is my understanding.</p> <p>5 Q. Okay. So you actually made the call.</p> <p>6 A. Yes.</p> <p>7 Q. Who did you speak to?</p> <p>8 A. Investigator Dick Tracy.</p> <p>9 Q. And is he with the Criminal Bureau?</p> <p>10 A. Yes.</p> <p>11 Q. And what was the content of that call? Can you</p> <p>12 describe it?</p> <p>13 A. The first call was basically, you know, letting</p> <p>14 him know that we have this issue. We executed the</p> <p>15 search warrant at the Railroad Tavern in Keene.</p> <p>16 As a result of not getting all the recordings,</p> <p>17 that we needed to execute a second search</p> <p>18 warrant. During the first execution -- um -- the</p> <p>19 -- um -- investigators were approached by a State</p> <p>20 Rep. We have to go back down there again, and</p> <p>21 we're concerned about, you know, should he show</p> <p>22 up, so we're asking to see if your office would be</p> <p>23 able to assist us with just escorting us -- not</p>
<p style="text-align: right;">497</p> <p>1 escorting us but going down there with us for the</p> <p>2 search warrant.</p> <p>3 Q. So would that be like having one of the local --</p> <p>4 they've heard testimony earlier that you have a</p> <p>5 local police department that typically goes with</p> <p>6 you on a search warrant. Would it be sort of the</p> <p>7 same function?</p> <p>8 A. I think this was a little unorthodox and different</p> <p>9 because of the political nature of having a State</p> <p>10 Representative there.</p> <p>11 Q. Okay. So it was unorthodox to ask our office to</p> <p>12 assist you. Is that what you mean?</p> <p>13 A. That, too, but also unorthodox to have a State Rep</p> <p>14 show up at a search warrant.</p> <p>15 Q. Okay. So how long did you -- how long did that</p> <p>16 call last do you think?</p> <p>17 A. Oh, it couldn't have lasted more than a minute and</p> <p>18 a half, two minutes.</p> <p>19 Q. And did you get a response right then?</p> <p>20 A. No. I -- indicated he needed to run that by a</p> <p>21 supervisor and that he would call me back.</p> <p>22 Q. Did he call you back?</p> <p>23 A. He did.</p>	<p style="text-align: right;">498</p> <p>1 Q. And what was the response?</p> <p>2 A. That he suggested -- his supervisors weren't going</p> <p>3 to allow him to do it, and he suggested that we</p> <p>4 seek the assistance of Keene Police or State</p> <p>5 Police.</p> <p>6 Q. And were you surprised by that?</p> <p>7 A. No.</p> <p>8 Q. Because you already had investigators that were</p> <p>9 lined up to go with you, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And it was pretty unusual to call the AG's Office</p> <p>12 for that kind of thing.</p> <p>13 A. Correct.</p> <p>14 Q. Now, are you familiar with a Public Integrity Unit</p> <p>15 of the Attorney General's Office? Are you</p> <p>16 familiar with that at all?</p> <p>17 A. Not really. I mean I've heard of it, but that's</p> <p>18 about it.</p> <p>19 Q. Do you have an understanding of what the Public</p> <p>20 Integrity Unit is for?</p> <p>21 A. As an educated guess, I would assume that they're</p> <p>22 there to ensure that public officials, law</p> <p>23 enforcement, you know, elected officials are there</p>

<p style="text-align: right;">499</p> <p>1 to -- um -- to do what they're supposed to do on</p> <p>2 an ethical and moral and law-abiding nature.</p> <p>3 Q. So if I told you that the Public Integrity Unit</p> <p>4 is -- investigates criminal conduct by public</p> <p>5 officials, would you have any reason to disagree</p> <p>6 with me about that?</p> <p>7 A. No.</p> <p>8 Q. At some point on the evening of December 16th you</p> <p>9 had a conversation with Eddie Edwards, your Chief,</p> <p>10 regarding the surveillance equipment that had been</p> <p>11 seized; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And what do you recall that conversation being?</p> <p>14 A. I want to make sure I have the right conversation</p> <p>15 we're talking about.</p> <p>16 Q. Oh, sure. When we're talking about returning the</p> <p>17 surveillance equipment. I apologize.</p> <p>18 A. Okay. Basically the conversation was -- and I was</p> <p>19 actually in my office that night, and the</p> <p>20 conversation was nothing more than him calling me</p> <p>21 up saying we needed to return that equipment right</p> <p>22 away.</p> <p>23 Q. And do you recall what time that telephone call</p>	<p style="text-align: right;">500</p> <p>1 came in?</p> <p>2 A. I think it was around 6:30 maybe.</p> <p>3 Q. 6:30. So it was evening --</p> <p>4 A. Yes.</p> <p>5 Q. -- past normal hours.</p> <p>6 A. Yes, it was.</p> <p>7 Q. And he called you and said we got to get the</p> <p>8 equipment back tonight?</p> <p>9 A. Yes.</p> <p>10 Q. That must have been a headache for you.</p> <p>11 A. Not so much for me as it was for the investigators</p> <p>12 that had to go do it.</p> <p>13 Q. So how did you arrange that? Did you know that --</p> <p>14 let me back that up. Did you know the status of</p> <p>15 the downloading of the video footage at that</p> <p>16 point?</p> <p>17 A. Yes.</p> <p>18 Q. What was it?</p> <p>19 A. Again, just to reiterate what I said earlier was</p> <p>20 they only had nine minutes of it, so now that they</p> <p>21 had actually seized the equipment Sergeant Fussell</p> <p>22 and Sergeant Elliott -- primarily Sergeant Fussell</p> <p>23 was responsible for downloading -- viewing all the</p>
<p style="text-align: right;">501</p> <p>1 hours of tape and downloading all that onto the</p> <p>2 disks. I know that they still had several hours</p> <p>3 left to go to do that, and at that particular</p> <p>4 present time it wasn't being done simply because</p> <p>5 Sergeant Fussell was also engaged in conducting</p> <p>6 other interviews for this investigation.</p> <p>7 Q. And he was in fact in Keene, right?</p> <p>8 A. Right.</p> <p>9 Q. Where was the equipment?</p> <p>10 A. Concord.</p> <p>11 Q. So what did you do to get this done?</p> <p>12 A. Coincidentally, Sergeant Elliott was actually in</p> <p>13 the office at that time as well. Knowing that he</p> <p>14 had already been involved in this particular</p> <p>15 incident in this investigation, I instructed him</p> <p>16 to grab the equipment, go meet Sergeant Fussell at</p> <p>17 Troop C in Keene, download the equipment, do what</p> <p>18 they had to do and then return the equipment that</p> <p>19 night to Randy Filiault.</p> <p>20 Q. Were you concerned about being able to get that</p> <p>21 download done that evening?</p> <p>22 A. No, I knew they had several hours to go. It</p> <p>23 certainly was going to take them much longer than</p>	<p style="text-align: right;">502</p> <p>1 anticipated -- or not much longer than</p> <p>2 anticipated, but it was one of those things where</p> <p>3 it wasn't planned on being done that -- that</p> <p>4 late. It was certainly later than they were</p> <p>5 anticipating working, but there was no doubt they</p> <p>6 would be able to get it done.</p> <p>7 Q. Do you remember talking to Eddie Edwards? Do you</p> <p>8 remember that phone call where he -- you might</p> <p>9 have said to him -- or would you disagree -- let</p> <p>10 me phrase it that way -- if Eddie Edwards said</p> <p>11 that you might have said I'm not sure we can get</p> <p>12 that done tonight?</p> <p>13 A. I think my comment to him was, you know -- his</p> <p>14 comment to me was, "We need to get that downloaded</p> <p>15 and turned back over to him right away." I think</p> <p>16 my comment was, "Absolutely. No problem. We'll</p> <p>17 have it done first thing in the morning." And</p> <p>18 that was no, you need to get it done now. So</p> <p>19 that's where we left it, and that's the way we did</p> <p>20 it.</p> <p>21 Q. Okay. And that evidence had been in custody for</p> <p>22 approximately 24 hours; is that right?</p> <p>23 A. I believe so, yes.</p>

<p style="text-align: right;">503</p> <p>1 Q. Was it unusual to get equipment turned around that</p> <p>2 quickly and returned to the owner?</p> <p>3 A. Yes.</p> <p>4 Q. Does the Liquor Enforcement Division have standard</p> <p>5 procedures for the handling, storage and return of</p> <p>6 physical evidence that is seized pursuant to a</p> <p>7 warrant?</p> <p>8 A. Yes.</p> <p>9 Q. And I'm going to be showing you what is State's</p> <p>10 Exhibit 7 for ID and ask if you recognize this.</p> <p>11 A. I do.</p> <p>12 Q. What is that?</p> <p>13 A. That's policy O-405, Property Control, and it was</p> <p>14 effective September 28th, 2007.</p> <p>15 Q. So this would have been in effect in December of</p> <p>16 2009; is that correct?</p> <p>17 A. Yes, but let me just also add to that, and the</p> <p>18 same thing goes for the other policy. It was</p> <p>19 revised as of August 14th, 2009, so it's unknown</p> <p>20 to me at this point without looking back to the</p> <p>21 previous ones whether or not there's other</p> <p>22 information or changes that have been made to</p> <p>23 that.</p>	<p style="text-align: right;">504</p> <p>1 Q. Okay. All right. But you don't dispute that this</p> <p>2 is the one -- you provided our office with copies</p> <p>3 of your current policies, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And you agree that that's -- would be the</p> <p>6 one that you provided us?</p> <p>7 A. Absolutely.</p> <p>8 Q. Okay.</p> <p>9 MS. RICE: I move to strike the ID on</p> <p>10 this.</p> <p>11 MR. MCLAUGHLIN: No objection.</p> <p>12 MS. RICE: Thank you.</p> <p>13 (The identification marking was stricken</p> <p>14 from Petitioner's Exhibit 7, and the exhibit was</p> <p>15 received in evidence.)</p> <p>16 BY MS. RICE:</p> <p>17 Q. Is it fairly -- the policy that I've just showed</p> <p>18 you, are there fairly standard procedures for</p> <p>19 handling of evidence in -- in criminal cases or in</p> <p>20 law enforcement?</p> <p>21 A. Yes, I believe so.</p> <p>22 Q. Okay. And do these policies have those kinds of</p> <p>23 procedures in them, the policy that I just handed</p>
<p style="text-align: right;">505</p> <p>1 you?</p> <p>2 A. Absolutely.</p> <p>3 Q. Things like chain of evidence, keeping track of</p> <p>4 where evidence is, who took it and who had it</p> <p>5 after that, making sure that you know what hands</p> <p>6 have touched it?</p> <p>7 A. Yes.</p> <p>8 Q. Does it talk about secure storage of evidence?</p> <p>9 A. Yes.</p> <p>10 Q. What's the purpose of securely storing evidence?</p> <p>11 A. Just maintaining the chain of custody.</p> <p>12 Q. How about releasing it for court proceedings or</p> <p>13 releasing it to -- for other people?</p> <p>14 A. Yes.</p> <p>15 Q. And is all of this fair to say that it's to</p> <p>16 maintain the integrity of the evidence?</p> <p>17 A. Absolutely.</p> <p>18 Q. And is there a standard procedure in your</p> <p>19 department for releasing evidence once it's been</p> <p>20 seized pursuant to a warrant?</p> <p>21 A. We routinely submit a Motion to the Court to</p> <p>22 return that evidence or destroy it.</p> <p>23 Q. So either returning or destroying, you would file</p>	<p style="text-align: right;">506</p> <p>1 a Motion with the Court?</p> <p>2 A. Yes.</p> <p>3 Q. And do you know if this was -- if that was done in</p> <p>4 this case?</p> <p>5 A. It was not.</p> <p>6 Q. Was there really any time to do it in this case?</p> <p>7 A. No.</p> <p>8 Q. Now, I want to go back one more time to your</p> <p>9 conversation with Dick Tracy, Investigator Tracy.</p> <p>10 You weren't reporting criminal conduct at the time</p> <p>11 that you talked to him, were you?</p> <p>12 A. No.</p> <p>13 MS. RICE: I have nothing further.</p> <p>14 GOVERNOR LYNCH: Thank you. Attorney</p> <p>15 McLaughlin.</p> <p>16 CROSS-EXAMINATION</p> <p>17 BY MR. MCLAUGHLIN:</p> <p>18 Q. Attorney Rice asked you one question among</p> <p>19 others. She said -- she said, I think, did you</p> <p>20 ask for assistance from the Attorney General's</p> <p>21 Office, and I think your answer to that was yes,</p> <p>22 right?</p> <p>23 A. Correct.</p>

<p style="text-align: right;">507</p> <p>1 Q. And then you indicated that you were told you 2 weren't going to get assistance, correct? 3 A. Yes, sir. 4 Q. And she asked you were you surprised by that. Do 5 you recollect that? 6 A. I said I was not surprised. 7 Q. Yes. And why weren't you surprised? 8 A. In 16 years of doing this job, I have never 9 once -- number one, I have never asked the 10 Attorney General's Office for assistance and going 11 with us for a search warrant. Number two, I just 12 didn't think it was something that they would get 13 involved with at this point. 14 Q. Were you told not to tell the people at the AG's 15 Office the name of Representative Eaton? 16 A. Yes, I was. 17 Q. Were you told why not to tell them that? 18 A. No. I don't recall that part of it, no. I mean 19 it was such a quick conversation -- um -- where it 20 was determined let's call the Attorney General's 21 Office and ask for assistance, but don't tell 'em 22 it was Representative Eaton, and I'm dialing the 23 phone as we're having the conversation, so I don't</p>	<p style="text-align: right;">508</p> <p>1 recall that particular nature of it. 2 Q. You don't recall the nature of what? 3 A. Of being told why not to tell him. I'm 4 speculating based on all the previous 5 conversations and innuendos. 6 Q. Well, you were there. What was your understanding 7 of why you were told not to? 8 A. Just to reiterate what I said, and that was 9 because of the political involvement with -- with 10 Representative Eaton on the transfer of Liquor 11 Enforcement to including this, you know, 10-year 12 grudge or issue against Chief Edwards. 13 Q. And did you in fact tell the AG's Office that it 14 was Representative Eaton? 15 A. I did. During the very brief conversation with 16 Dick Tracy, he asked me who it was, and, quite 17 frankly, I told him. 18 Q. You told him. 19 A. Absolutely. 20 Q. And I gather the Chief was not pleased with that? 21 A. No, he wasn't. 22 Q. And then you got a call back later? 23 A. Yes.</p>
<p style="text-align: right;">509</p> <p>1 Q. And the AG's Office said they couldn't help you. 2 You should take Keene or State Police? 3 A. Correct. 4 Q. And when that was done they knew it was 5 Representative Eaton, correct? 6 A. Correct. Well, I can only speculate that Dick 7 Tracy would have told his supervisors who the 8 Representative was. I wasn't privy obviously to 9 his conversation with them, but I'm assuming. 10 Q. You have no reason of assuming he wouldn't, would 11 you? 12 A. No. 13 Q. You are a former police chief, are you not? 14 A. Right. 15 Q. And in your role as a former police chief you have 16 certainly executed warrants, correct? 17 A. Absolutely. 18 Q. And you have the experience of returning 19 equipment -- correction -- returning the fruits of 20 your search after a time? 21 A. Yes, sir. 22 Q. And you have the experience of soliciting a 23 judge's permission to do that, correct?</p>	<p style="text-align: right;">510</p> <p>1 A. Yes, sir. 2 Q. Are you privy to ever having returned evidence 3 without soliciting a judge's permission? 4 A. Yes. 5 Q. Has that occurred? 6 A. Yes. 7 Q. Has it been considered a mortal sin? 8 A. No. 9 Q. In this particular case, do you -- I'll rephrase 10 the question. You have no reason to believe, do 11 you, that Commissioner Bodi would know one way or 12 the other whether or not a judge's permission were 13 needed? 14 A. Only in the sense that the Chief would have had a 15 conversation with the Chairman letting him know. 16 Q. So if that happened, that happened. 17 A. Yes. 18 Q. All right. Did the Chief instruct you not to get 19 a judge's permission? 20 A. No. 21 Q. Did you instruct your officers not to get a 22 judge's permission? 23 A. No.</p>

<p style="text-align: right;">511</p> <p>1 Q. After the equipment had been returned, did -- I'm</p> <p>2 not suggesting you should have. I'm just asking.</p> <p>3 A. Sure.</p> <p>4 Q. Did you instruct any people below you to go and</p> <p>5 get a confirmatory permission from a judge?</p> <p>6 A. No, sir.</p> <p>7 Q. Just no one way or the other.</p> <p>8 A. Right.</p> <p>9 Q. Would you agree with me, knowing that system, that</p> <p>10 if you had gone in to ask a judge's permission to</p> <p>11 return that equipment, the judge would have said</p> <p>12 okay?</p> <p>13 A. I do. Absolutely.</p> <p>14 Q. Can you imagine any circumstance where a judge</p> <p>15 would have said not okay?</p> <p>16 A. No.</p> <p>17 Q. And if you went back afterwards and said Judge, we</p> <p>18 didn't do this up-front. We want you to know it.</p> <p>19 We want your okay. Can you imagine the judge not</p> <p>20 saying okay to that?</p> <p>21 A. No.</p> <p>22 Q. All right. Why?</p> <p>23 A. Because, quite frankly, it wasn't the equipment</p>	<p style="text-align: right;">512</p> <p>1 per se that was the evidence. It was the video</p> <p>2 that we obtained from that that was truly the</p> <p>3 evidence.</p> <p>4 Q. All right. And you made very sure that that</p> <p>5 evidence was secured, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And you'd been instructed to do that directly by</p> <p>8 the Chief, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And to pay overtime if you need to, correct?</p> <p>11 A. Absolutely.</p> <p>12 Q. And he did that by phone, correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. From the Chairman's office, correct?</p> <p>15 A. I believe so, yes, sir.</p> <p>16 Q. Okay. I don't know how she framed it, Major, but</p> <p>17 you were essentially asked about procedures for</p> <p>18 conducting internal investigations when someone</p> <p>19 was charged with doing something improperly</p> <p>20 amongst your officers, specifically, for example,</p> <p>21 being heavy-handed in executing a search warrant,</p> <p>22 and you've indicated in this case there was no</p> <p>23 internal investigation done, correct?</p>
<p style="text-align: right;">513</p> <p>1 A. Correct.</p> <p>2 Q. This event in Keene transpired on the 14th, 15th</p> <p>3 and 16th, I believe, of December, correct?</p> <p>4 A. I believe so.</p> <p>5 Q. And Commissioner Bodi was suspended with pay</p> <p>6 sometime the first part of the year?</p> <p>7 A. I believe so.</p> <p>8 Q. Is that your memory?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And at the current time there are two</p> <p>11 Commissioners who sit there, a permanent</p> <p>12 Commissioner, Commissioner Mollica, correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And a Temporary Acting Commissioner, Commissioner</p> <p>15 Sweeney, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Have either of them instructed you to commence an</p> <p>18 investigation, an internal investigation, with</p> <p>19 respect to Sergeant Elliott and Sergeant Fussell?</p> <p>20 A. No, sir.</p> <p>21 Q. And when Commissioner Simard was there, in fact,</p> <p>22 did he ever instruct you to do that?</p> <p>23 A. No, sir.</p>	<p style="text-align: right;">514</p> <p>1 Q. Okay. All of this activity that's gone on so</p> <p>2 publicly adverse to Commissioner Bodi, in your</p> <p>3 judgment, being tuned in to your department, has</p> <p>4 it -- has it caused people in your department to</p> <p>5 lose faith in Commissioner Bodi?</p> <p>6 A. Absolutely not.</p> <p>7 Q. Not?</p> <p>8 A. Not.</p> <p>9 Q. Would it be fair to say that people in your</p> <p>10 department would welcome him back if he were</p> <p>11 returned by this Commission?</p> <p>12 A. Yes, sir.</p> <p>13 MR. MCLAUGHLIN: I have no further</p> <p>14 questions.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 REDIRECT EXAMINATION</p> <p>17 BY MS. RICE:</p> <p>18 Q. Major Feyrer, you said that everyone in the</p> <p>19 Commission would welcome Major -- or excuse me --</p> <p>20 Commissioner Bodi back. You haven't polled</p> <p>21 everyone, have you?</p> <p>22 A. No, I haven't.</p> <p>23 Q. Okay. And, in fact, would it surprise you that</p>

<p style="text-align: right;">515</p> <p>1 there are a number of people that don't want to 2 have Commissioner Bodi come back? 3 A. No. And I have to clarify. When I was talking -- 4 when I did answer that I was more referring to 5 Enforcement and not the other divisions in there, 6 but, again, like you said, I certainly didn't poll 7 all the investigators either. 8 Q. Okay. 9 MS. RICE: Thank you. 10 MR. MCLAUGHLIN: I have no follow-up. 11 Thank you. 12 GOVERNOR LYNCH: Yes, go ahead. 13 MR. MCLAUGHLIN: I have no follow-up. 14 Thank you. 15 GOVERNOR LYNCH: Any questions from the 16 members of the Executive Council? Okay. Thank 17 you very much. 18 THE WITNESS: Thank you, sir. 19 GOVERNOR LYNCH: Thank you. 20 MS. RICE: Governor, we have one short 21 witness who is right in our office. Can we call 22 him? 23 GOVERNOR LYNCH: Absolutely.</p>	<p style="text-align: right;">516</p> <p>1 MR. MCLAUGHLIN: Governor, for planning 2 purposes, if there's going to be a witness, since 3 it is 2:30, will this be the last witness for the 4 day? 5 GOVERNOR LYNCH: Yes. 6 MR. MCLAUGHLIN: Thank you, sir. 7 (The proceedings are recessed at 8 2:30 p.m.) 9 (The proceedings reconvene on the record 10 at 2:36 p.m.) 11 GOVERNOR LYNCH: Okay. Let's resume and 12 ask, Attorney Rice, it's all yours. 13 MS. CUSACK: Thank you, Governor. The 14 State next calls Dick Tracy to the stand. Would 15 you raise your hand. 16 TESTIMONY OF RICHARD TRACY, 17 who was called as a witness and, having been first 18 duly sworn, was examined and testified as follows: 19 DIRECT EXAMINATION 20 BY MS. CUSACK: 21 Q. Thank you. You may be seated. Mr. Tracy, will 22 you spell your name -- state your name, and spell 23 your name for the record.</p>
<p style="text-align: right;">517</p> <p>1 A. Richard Tracy. R-i-c-h-a-r-d. T-r-a-c-y. 2 Q. Thank you, Mr. Tracy. How are you employed? 3 A. I'm currently employed with the New Hampshire 4 Attorney General's Office. 5 Q. And how long have you been there? 6 A. A little over three years. 7 Q. What is your role? 8 A. I'm assigned to the Criminal Bureau as an 9 investigator. 10 Q. And as an investigator what are your duties? 11 A. I field numerous calls and complaints and concerns 12 from citizens throughout the state. I investigate 13 criminal activity that's reported to us and public 14 integrity cases. 15 Q. Before coming to the Attorney General's Office, 16 what did you do? 17 A. I was employed by the City of Manchester as a 18 police officer for a little over 27 years. 19 Q. And did you retire from the Manchester Police 20 Department? 21 A. Yes, I did, in 2007. 22 Q. What was your rank when you retired? 23 A. I retired at the rank of captain.</p>	<p style="text-align: right;">518</p> <p>1 Q. What -- did you go to the academy -- Police 2 Academy? 3 A. Yes, I did, in 1980 to the 51st Academy. 4 Q. I want to draw your attention to December of 2009, 5 and just so as not to repeat a lot of what's gone 6 on, there was a phone call. The Council and 7 Governor have just heard about a phone call. How 8 did you become aware of the Railroad Tavern in 9 December of 2009? 10 A. Initially I had received a telephone call from New 11 Hampshire Liquor Enforcement Major Todd Feyrer, I 12 believe on the morning of December 15th. 13 Q. And what was that phone call about? 14 A. He made me aware or was -- I should say he was 15 requesting services of either myself or someone 16 from our office to assist a couple of his agents 17 with executing a search warrant at the Railroad 18 Tavern. 19 Q. Did he provide any specifics to you about a 20 concern? 21 A. He stated that they had conducted a search warrant 22 the day prior and received -- found out -- 23 discovered that they had received nine minutes of</p>

<p style="text-align: right;">519</p> <p>1 tape, and the search warrant had called for three</p> <p>2 hours of tape. They also brought to my attention</p> <p>3 that the owner of the establishment was known to</p> <p>4 be friendly with and had contacted a State</p> <p>5 Representative.</p> <p>6 Q. And did they ask you to do anything about that,</p> <p>7 the contact of the State Representative?</p> <p>8 A. Other than to just ask if I could be present at</p> <p>9 the execution of the second search warrant.</p> <p>10 Q. And what did you inform them about whether you</p> <p>11 could be present or not?</p> <p>12 A. Well, in the -- I had two conversations with Major</p> <p>13 Feyrer that day. The first conversation, I told</p> <p>14 him that I would speak with my supervisor about</p> <p>15 his request, but that I -- um -- didn't think that</p> <p>16 that was something that I would get involved in,</p> <p>17 standing by and witnessing the execution of a</p> <p>18 search warrant for his officers, but I would check</p> <p>19 with the supervisor. I went to speak with the</p> <p>20 Bureau Chief, Jane Young. She wasn't present, so</p> <p>21 I confided with the Chief Investigator Paul</p> <p>22 Brodeur.</p> <p>23 Q. Now, let me ask you about this first phone call,</p>	<p style="text-align: right;">520</p> <p>1 and I understand your testimony is that -- that</p> <p>2 you indicated that you did not believe that you</p> <p>3 could assist them with this warrant. That's in</p> <p>4 this first phone conversation?</p> <p>5 A. That's correct.</p> <p>6 Q. And how long did this first conversation take?</p> <p>7 A. One to two minutes.</p> <p>8 Q. Did Major Feyrer give you a name of a State</p> <p>9 Representative?</p> <p>10 A. He did, but I can't say if it was in the first</p> <p>11 phone call or if it was in the second phone call,</p> <p>12 but -- um -- when I called him back, but the State</p> <p>13 Rep's name that he provided was Dan Eaton.</p> <p>14 Q. And did that mean -- did that name mean anything</p> <p>15 to you?</p> <p>16 A. On December 15th of 2009, it did not mean anything</p> <p>17 to me.</p> <p>18 Q. I'm going to make a representation to you -- I'm</p> <p>19 switching subjects now. Make a representation to</p> <p>20 you about testimony that has been provided in this</p> <p>21 case, and earlier Eddie Edwards has testified that</p> <p>22 he had a conversation with the AG's Office, Jane</p> <p>23 Young and you, about delaying the administrative</p>
<p style="text-align: right;">521</p> <p>1 case until the criminal investigation at the AG's</p> <p>2 Office was complete. Do you recall any</p> <p>3 conversation with Attorney -- or excuse me -- with</p> <p>4 Eddie Edwards about a delay in the administrative</p> <p>5 prosecution of their case?</p> <p>6 A. I recall having a conversation with Chief</p> <p>7 Edwards. I don't know -- are you saying that</p> <p>8 he -- we asked him to delay the administrative</p> <p>9 process?</p> <p>10 Q. If I represent his testimony correctly, that was</p> <p>11 what he was asked -- that he asked you that -- or</p> <p>12 the conversation took place, and the AG's Office</p> <p>13 asked Eddie Edwards to delay the administrative</p> <p>14 case.</p> <p>15 A. I believe -- I recall it as asking him when he</p> <p>16 thought the administrative process would take</p> <p>17 place, and I got the impression from him it was</p> <p>18 some time off. And I recall asking him should it</p> <p>19 come forward before we've completed our</p> <p>20 investigation, if he would notify us when that</p> <p>21 date was to be set. I don't recall asking him to</p> <p>22 purposely delay the administrative process.</p> <p>23 MS. CUSACK: One moment, please.</p>	<p style="text-align: right;">522</p> <p>1 (There is a brief pause.)</p> <p>2 BY MS. CUSACK:</p> <p>3 Q. Now, after your initial phone contact with Major</p> <p>4 Feyrer when you called him back, did you have any</p> <p>5 other follow-up contacts with anybody from the</p> <p>6 Liquor Commission about a public integrity</p> <p>7 complaint?</p> <p>8 A. Yes, in January of 2010.</p> <p>9 Q. Thank you.</p> <p>10 MS. CUSACK: I have nothing further for</p> <p>11 the witness.</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. MCLAUGHLIN:</p> <p>14 Q. Mr. Tracy, Phil McLaughlin. If we've met, I don't</p> <p>15 recollect it. Have we met?</p> <p>16 A. Um -- you came to the office recently, sir, and I</p> <p>17 said hello to you.</p> <p>18 Q. Okay. You were present at a number of interviews</p> <p>19 conducted by Attorney Young regarding this</p> <p>20 Bodi/Eaton investigation, were you not?</p> <p>21 A. Yes, sir.</p> <p>22 Q. You were the person functionally responsible for</p> <p>23 putting together the State's 604-page report, were</p>

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1 you not?

2 MS. CUSACK: Your Honor -- Your Honor, if

3 I might at this point, this is beyond the scope of

4 my direct, and Attorney McLaughlin has not

5 indicated that this witness -- that he wanted to

6 call this witness, so I think we're limited to the

7 relevance of anything that he's just testified to

8 and the scope of that direct.

9 GOVERNOR LYNCH: Maybe you could make a

10 proffer in terms of where you're going with this.

11 MR. MCLAUGHLIN: Certainly. Mindful of

12 the fact that this officer was going to be called,

13 my intention was to do the following by way of

14 proffer now. First of all, the Attorney General's

15 Office has specifically alleged that Mr. Bodi was,

16 from their perspective, uncooperative with this

17 investigation. I think that's clearly publicly

18 established.

19 Secondly, my intention through this

20 witness is to lay the following foundation. One,

21 that he made a memorandum of a call from Mark Bodi

22 on February 9th, 2010. Two, that he made a

23 detailed memorandum on February 11th, 2010

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1 Q. Thank you. May I see it, please, sir?

2 (The witness hands the exhibit to

3 Attorney McLaughlin.)

4 Q. Thank you very much. And would you agree with me

5 that it purports to be a memorandum from you

6 essentially to the file commemorating a phone

7 message you got from Commissioner Bodi?

8 A. Yes, it's a re -- it's a --

9 Q. I'll just read it. "February 9th, 2010. 8:52.

10 Dick, Mark Bodi returning your call. 271-1705.

11 Thank you. Tuesday, February 9th, at 3:07 p.m.

12 Hi, Dick. Mark Bodi. I got your second message.

13 No, I'm not available tomorrow, but I think more

14 importantly I'd like to have a conversation with

15 you with respect to the nature of this meeting, so

16 either give me a call or have Jane give me a call

17 at your convenience to see if we can be helpful.

18 Thank you."

19 A. It's a typed memo of a voice mail --

20 Q. Good.

21 A. -- left by the Commissioner.

22 Q. Reflecting the fact that Commissioner Bodi was

23 getting back in contact with you, correct?

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1 regarding an array of contacts back and forth by

2 phone messaging, et cetera over a two-day period

3 which sets forth in detail the nature of that

4 relationship and that effort to be in touch with

5 Mr. Bodi. And what I want to do is introduce

6 those documents through him, although I will

7 concede that I could certainly put them in through

8 Commissioner Bodi tomorrow, but that's -- that's

9 it. I see it as benign. I don't see it as

10 nefarious in any way.

11 GOVERNOR LYNCH: Counsel.

12 MS. CUSACK: We have no further

13 objection.

14 GOVERNOR LYNCH: Okay. Go ahead and

15 proceed, Attorney McLaughlin.

16 MR. MCLAUGHLIN: Thank you.

17 BY MR. MCLAUGHLIN:

18 Q. And what I'll do, Mr. Tracy, just to make it short

19 is this. I'm going to show you an item

20 purportedly Defendant's BB for identification and

21 ask whether or not you recognize it as a

22 memorandum which you formulated.

23 A. Yes, sir, I recall this memo.

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1 A. Yes.

2 Q. Okay.

3 MR. MCLAUGHLIN: Governor, I would ask

4 that the ID be stricken and that the exhibit be

5 accepted as -- I've captioned it Defendant's --

6 Respondent's BB.

7 MS. CUSACK: We have no objection.

8 (The identification marking was stricken

9 from Respondent's Exhibit BB, and the exhibit was

10 received in evidence.)

11 BY MR. MCLAUGHLIN:

12 Q. Similarly, Mr. Tracy, purportedly Defendant's Z

13 for ID. Please confirm it's a memorandum from

14 you. I believe it's dated the 11th.

15 A. Yes, sir, that's a memo that I prepared.

16 Q. Would it be a fair characterization that this

17 would be a more comprehensive memo setting forth

18 pretty much chronologically a set of contacts

19 between you and/or Attorney Young and/or Mark Bodi

20 over -- I believe from February 8th through, I

21 believe, February 11th? I'm not positive.

22 A. Within -- it was within the same week.

23 Q. Okay. Fair characterization?

<p style="text-align: right;">527</p> <p>1 A. Yes, sir.</p> <p>2 Q. And if we were to look at this, what we would find</p> <p>3 is details of the characterization. Is that fair?</p> <p>4 A. Yes, sir.</p> <p>5 MR. MCLAUGHLIN: I'd move to strike the</p> <p>6 ID.</p> <p>7 MS. CUSACK: We have no objection.</p> <p>8 (The identification marking is stricken</p> <p>9 from Respondent's Exhibit Z, and the exhibit is</p> <p>10 received in evidence.)</p> <p>11 BY MR. MCLAUGHLIN:</p> <p>12 Q. The Attorney General's Office has a Web site, does</p> <p>13 it not, sir?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And the Web site in fact has a so-called</p> <p>16 investigator section, correct?</p> <p>17 A. I believe it does.</p> <p>18 Q. I'm going to show you an item purportedly</p> <p>19 Defendant's EE for ID, ask if you would take a</p> <p>20 look at it, sir, and confirm for me that that's a</p> <p>21 fair representation of the Attorney General's</p> <p>22 Office Web site as it pertains to investigative</p> <p>23 functions.</p>	<p style="text-align: right;">528</p> <p>1 A. Yes, sir, it is.</p> <p>2 Q. Thank you. And it would be fair to say -- it</p> <p>3 would be fair to say, among other things, that it</p> <p>4 announces essentially to anybody who would care to</p> <p>5 look, among other things, that it is investigative</p> <p>6 function to investigate public corruption in</p> <p>7 integrity cases involving criminal activity by</p> <p>8 public officials, including police officers,</p> <p>9 correct?</p> <p>10 A. Yes, sir.</p> <p>11 MR. MCLAUGHLIN: I'd move to strike the</p> <p>12 ID, Governor.</p> <p>13 MS. RICE: No objection.</p> <p>14 GOVERNOR LYNCH: Okay.</p> <p>15 (The identification marking is stricken</p> <p>16 from Respondent's Exhibit EE, and the exhibit is</p> <p>17 received in evidence.)</p> <p>18 MR. PERRAULT: Attorney McLaughlin, we</p> <p>19 don't have copies of that.</p> <p>20 MR. MCLAUGHLIN: Thank you.</p> <p>21 (Attorney McLaughlin gives copies of the</p> <p>22 exhibit to the Governor and members of the</p> <p>23 Executive Council.)</p>
<p style="text-align: right;">529</p> <p>1 BY MR. MCLAUGHLIN:</p> <p>2 Q. Mr. Tracy, when you receive these calls circa the</p> <p>3 14th or 15th of December from Major Feyrer, did</p> <p>4 you make any memoranda to the file of having</p> <p>5 received those calls?</p> <p>6 A. I did not type a memorandum, no.</p> <p>7 Q. Were you sensible to the fact that the major was</p> <p>8 giving you information that a State Representative</p> <p>9 had appeared at the execution of a search warrant?</p> <p>10 A. My recollection is I can't say for certainty if</p> <p>11 Major Feyrer told me that the State Rep had</p> <p>12 appeared at the execution of the search warrant on</p> <p>13 December 14th or not.</p> <p>14 Q. Forgetting December 14th, did you have the thrust</p> <p>15 that the reason you were getting the call from</p> <p>16 that major is because he was seeking assistance?</p> <p>17 A. He was seeking -- my impression was he was seeking</p> <p>18 me or someone from our office to go with members</p> <p>19 of his staff to stand by and witness the execution</p> <p>20 of the second search warrant.</p> <p>21 Q. So let's just take it a step at a time. He was</p> <p>22 seeking assistance, correct?</p> <p>23 A. Yes.</p>	<p style="text-align: right;">530</p> <p>1 Q. Isn't that easy?</p> <p>2 A. Well, he was seeking myself or someone from our</p> <p>3 office to stand by with his staff members while</p> <p>4 they executed a second search warrant.</p> <p>5 Q. And you knew that was happening because he told</p> <p>6 you it involved the presence of a State Rep during</p> <p>7 the execution of the first search warrant.</p> <p>8 A. I don't know if -- I don't recall it as being the</p> <p>9 presence but that the owner of the establishment</p> <p>10 had reached out to a friend of his who was a State</p> <p>11 Representative.</p> <p>12 Q. All right.</p> <p>13 A. And whether or not he told me that the State Rep</p> <p>14 showed up or not, I don't recall. He may have</p> <p>15 told me that, but I don't recall one way or the</p> <p>16 other.</p> <p>17 Q. And the reason you don't recall is because you</p> <p>18 didn't make any record of it, so in fairness to</p> <p>19 you there is no record to go to refresh your</p> <p>20 recollection, correct?</p> <p>21 A. I did not make a typed memo. I have a handwritten</p> <p>22 note but not a typed memo.</p> <p>23 Q. Do you have that handwritten note anywhere around?</p>

<p style="text-align: right;">531</p> <p>1 A. I don't have it with me, no.</p> <p>2 Q. Was it part of your 604-page report?</p> <p>3 A. I don't believe it was.</p> <p>4 Q. Why?</p> <p>5 A. Um -- I don't have an answer for that other than I</p> <p>6 didn't make it part of this investigation.</p> <p>7 Q. Do you have it available across the street?</p> <p>8 MS. CUSACK: Phil, I can -- I can say</p> <p>9 that I have it available in my hand right now, and</p> <p>10 I am aware that you were made -- you were given</p> <p>11 this document.</p> <p>12 MR. MCLAUGHLIN: Was I?</p> <p>13 MS. RICE: Yeah.</p> <p>14 MR. MCLAUGHLIN: When?</p> <p>15 MS. RICE: You were given it after one of</p> <p>16 the depositions.</p> <p>17 MR. MCLAUGHLIN: Let me see it, please.</p> <p>18 Thank you very much.</p> <p>19 MS. CUSACK: The middle.</p> <p>20 MR. MCLAUGHLIN: Thank you. You may be</p> <p>21 refreshing my recollection. I don't recollect it.</p> <p>22 MS. RICE: It's the middle message.</p> <p>23 MS. CUSACK: It's the middle message</p>	<p style="text-align: right;">532</p> <p>1 dated 12/15.</p> <p>2 MR. MCLAUGHLIN: Okay. I don't remember</p> <p>3 it, but thank you.</p> <p>4 BY MR. MCLAUGHLIN:</p> <p>5 Q. There is a memo here handwritten of 12/15. Would</p> <p>6 you please read it, sir. I believe your words.</p> <p>7 A. Some of it's abbreviated.</p> <p>8 Q. Yeah.</p> <p>9 A. The first word is, "LIC," which is short for</p> <p>10 license. The second word is "establishment."</p> <p>11 "License establishment. Keene. Surveillance</p> <p>12 system in bar recorded nine minutes. Search</p> <p>13 warrant required three hours. Railroad Tavern</p> <p>14 friendly with State Rep. Owner called State Rep</p> <p>15 Eaton." And then there's a phone number, and I</p> <p>16 believe that phone number is Major Todd Feyrer's</p> <p>17 phone number.</p> <p>18 Q. And the word "Eaton" is down there?</p> <p>19 A. It says, "Owner called State Rep. Eaton."</p> <p>20 Q. All right. Now, if that's the only memorandum you</p> <p>21 have, then there would be no other source for you</p> <p>22 to simply look at to refresh your recollection</p> <p>23 about the details of the call, correct?</p>
<p style="text-align: right;">533</p> <p>1 A. That's correct.</p> <p>2 Q. You do remember the call being made by Major</p> <p>3 Feyrer, correct?</p> <p>4 A. Todd Feyrer, yes.</p> <p>5 Q. And do you know whether or not Major Feyrer's call</p> <p>6 was made to you in the presence of Chief Edwards?</p> <p>7 A. I don't know.</p> <p>8 Q. You don't know one way or the other. Okay. If I</p> <p>9 understand correctly, you went to Chief</p> <p>10 Investigator Brodeur?</p> <p>11 A. Yes.</p> <p>12 Q. Ran the issue by him?</p> <p>13 A. Yes.</p> <p>14 Q. He said have him take somebody else?</p> <p>15 A. Pretty much, yes.</p> <p>16 Q. And you reported that to the major, correct?</p> <p>17 A. Advised him, yes.</p> <p>18 MR. MCLAUGHLIN: Thank you. I have no</p> <p>19 further questions.</p> <p>20 GOVERNOR LYNCH: Thank you, Attorney</p> <p>21 McLaughlin. Any redirect?</p> <p>22 MS. CUSACK: I have one redirect</p> <p>23 question.</p>	<p style="text-align: right;">534</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MS. CUSACK:</p> <p>3 Q. When a public integrity complaint was made to you</p> <p>4 in January -- that was your testimony on your</p> <p>5 direct.</p> <p>6 A. Yes.</p> <p>7 Q. Did the office of the Attorney General investigate</p> <p>8 that?</p> <p>9 A. Yes, we did.</p> <p>10 MS. CUSACK: Thank you. That's all I</p> <p>11 have.</p> <p>12 GOVERNOR LYNCH: Okay.</p> <p>13 MR. MCLAUGHLIN: May I just follow up</p> <p>14 briefly?</p> <p>15 GOVERNOR LYNCH: Yes. Go ahead, Attorney</p> <p>16 McLaughlin.</p> <p>17 RECROSS-EXAMINATION</p> <p>18 BY MR. MCLAUGHLIN:</p> <p>19 Q. When a formal complaint is made does somebody need</p> <p>20 to use the word this is a formal complaint in</p> <p>21 order to engage the interest of the Attorney</p> <p>22 General's Office with respect to a public</p> <p>23 integrity matter?</p>

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<p>1 A. No, sir.</p> <p>2 Q. No. It would be fair to say that some person</p> <p>3 reporting a State Rep named Eaton at a bar during</p> <p>4 the execution of a search warrant would be enough</p> <p>5 to at least prompt some people to think that might</p> <p>6 be a public integrity issue, correct?</p> <p>7 A. Could you repeat the question?</p> <p>8 Q. No.</p> <p>9 GOVERNOR LYNCH: Now, I would like to ask</p> <p>10 if there are any members of the Executive Council</p> <p>11 who have questions for Mr. Tracy.</p> <p>12 COUNCILOR BURTON: I have one.</p> <p>13 GOVERNOR LYNCH: Yes.</p> <p>14 COUNCILOR BURTON: When that complaint</p> <p>15 came in did you make any effort to contact the</p> <p>16 Attorney General or the Deputy Attorney General</p> <p>17 that something was amiss with a State</p> <p>18 Representative?</p> <p>19 THE WITNESS: Which? The phone call on</p> <p>20 December 15th or the --</p> <p>21 COUNCILOR BURTON: Yes. Any phone call.</p> <p>22 THE WITNESS: The December 15th phone</p> <p>23 call, I did not alert the Attorney General or the</p>	<p>1 Deputy Attorney General.</p> <p>2 COUNCILOR BURTON: Nothing further.</p> <p>3 GOVERNOR LYNCH: Okay. Any further</p> <p>4 questions from the -- for Mr. Counsel? Mr. Tracy,</p> <p>5 I mean.</p> <p>6 MS. RICE: Could I follow up?</p> <p>7 GOVERNOR LYNCH: Oh, yes.</p> <p>8 MS. RICE: One follow-up on that. That</p> <p>9 telephone call on the 15th, you didn't view that</p> <p>10 as a complaint, did you?</p> <p>11 THE WITNESS: No, I did not.</p> <p>12 MS. RICE: Nothing further.</p> <p>13 GOVERNOR LYNCH: Okay. All right. Thank</p> <p>14 you very much. You're excused. We will convene</p> <p>15 tomorrow at two o'clock. And it needs to be later</p> <p>16 than normal because we have an Executive Council</p> <p>17 meeting in the morning, and the plan would be to</p> <p>18 go from two to four tomorrow afternoon. Okay.</p> <p>19 Thank you.</p> <p>20 MR. MCLAUGHLIN: Your Honor, I'm</p> <p>21 proceeding --</p> <p>22 GOVERNOR LYNCH: Just let Attorney</p> <p>23 McLaughlin speak.</p>
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<p>1 MR. MCLAUGHLIN: I'm proceeding on the</p> <p>2 assumption that this is the State's last witness,</p> <p>3 and that I'll commence tomorrow. Is that</p> <p>4 accurate?</p> <p>5 MS. RICE: I expect that that's true, but</p> <p>6 we certainly want to look over our notes and make</p> <p>7 sure that is accurate. Certainly if we plan on</p> <p>8 calling another witness, I'll give you a call.</p> <p>9 MR. MCLAUGHLIN: Will you give me a call</p> <p>10 so that I'll know?</p> <p>11 MS. RICE: Certainly.</p> <p>12 MR. MCLAUGHLIN: Will you do that this</p> <p>13 afternoon or this evening?</p> <p>14 MS. RICE: Certainly.</p> <p>15 GOVERNOR LYNCH: Okay. Otherwise it's</p> <p>16 Attorney McLaughlin's turn, right, Attorney</p> <p>17 McLaughlin?</p> <p>18 MR. MCLAUGHLIN: That's what I</p> <p>19 understand.</p> <p>20 GOVERNOR LYNCH: Okay. So we're</p> <p>21 adjourned until tomorrow afternoon at two</p> <p>22 o'clock. Thank you very much.</p> <p>23 (The proceedings are adjourned at</p>	<p>1 3:01 p.m.)</p> <p>2 (After the proceedings were adjourned, a</p> <p>3 discussion was held off the record with all</p> <p>4 counsel and the court reporter out of the presence</p> <p>5 of the Governor and Executive Council.)</p> <p>6 (At the direction of Attorney Meyers and</p> <p>7 by agreement of all counsel, Exhibit KK was marked</p> <p>8 for identification.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

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1 CERTIFICATE OF REPORTER

2 I, Debra L. Mekula, Licensed Court Reporter of
3 the State of New Hampshire for the aforementioned
4 proceedings, do hereby certify that the evidence
5 and proceedings are contained fully and accurately
6 in the machine shorthand notes taken by me at the
7 hearing of the within cause at Concord, New
8 Hampshire, on Tuesday, September 21, 2010, that
9 the same were transcribed by me, and that this is
10 a true, complete, and accurate transcript of the
11 same.

12
13
14
15
16 Debra L. Mekula
Debra L. Mekula, LCR, RMR

17 Licensed Court Reporter
Registered Merit Reporter

18 N.H. LCR No. 26 (RSA 310-A)

